



58 Victoria.

Sessional Papers (No. 20.)

A. 1895

# PAPERS

IN REFERENCE TO THE

## MANITOBA SCHOOL CASE

Presented to Parliament

DURING THE

SESSION OF 1895

*PRINTED BY ORDER OF PARLIAMENT*



OTTAWA

PRINTED BY S. E. DAWSON, PRINTER TO THE QUEEN'S MOST  
EXCELLENT MAJESTY

1895



# Manitoba School Case.

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MANITOBA SCHOOL CASE (1894)

THE

JUDGMENT

OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE (IMPERIAL)  
PRIVY COUNCIL

TOGETHER WITH THE

IMPERIAL ORDER IN COUNCIL

AND THE

REMEDIAL ORDER IN COUNCIL



OTTAWA

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EXCELLENT MAJESTY

1895

# MESSAGE.

(20).

*ABERDEEN.*

The Governor General transmits to the House of Commons the Judgment of the Lords of the Judicial Committee of the Imperial Privy Council in the Manitoba School Case and the Imperial Order in Council founded thereon, together with the proceedings had before the Queen's Privy Council for Canada and the Remedial Order of the Governor General in Council.

GOVERNMENT HOUSE,  
OTTAWA, 22nd April, 1892.

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# Manitoba School Case.

## JUDGMENT

[Copy, Canada, No. 48.]

DOWNING STREET, 19th February, 1895.

MY LORD,—I have the honour to transmit to you for the information of your government, copies of the judgment of the Lords of the Judicial Committee of the Privy Council on the appeal of Brophy and others and the Attorney General of Manitoba, from the Supreme Court of Canada.

I have the honour to be,

Your most obedient humble servant,

(Signed), R. H. MEADE,  
For the Secy. of State.

JUDGMENT of the Lords of the Judicial Committee of the Privy Council on the appeal of Brophy and others v. the Attorney General of Manitoba, from the Supreme Court of Canada, delivered 29th January, 1895.

PRESENT :

The LORD CHANCELLOR,

LORD MACNAUGHTEN,

LORD WATSON,

LORD SHAND.

(Delivered by the Lord Chancellor).

In the year 1890, two Acts were passed by the legislature of Manitoba relating to education. One of these created a Department of Education and an "Advisory Board." The Board was to consist of seven members, four of whom were to be appointed by the Department of Education, two to be elected by the Public and High School teachers of the province, and one to be appointed by the University Council. The Advisory Board were empowered (amongst other things) to authorize text books for the use of pupils, and to prescribe the form of religious exercises to be used in schools.

The other Act, which was termed "The Public Schools Act," established a system of public education "entirely non-sectarian," no religious exercises being allowed except those conducted according to the regulations of the "Advisory Board." It will be necessary hereafter to refer somewhat more in detail to the provisions of this Act.

The Act came into force on the 1st of May, 1890. By virtue of its provisions, by-laws were made by the municipal corporation of Winnipeg, under which a rate was to be levied upon Protestant and Roman Catholic ratepayers alike for school purposes. An application was thereupon made to the Court of Queen's Bench of Manitoba to quash these by-laws on the ground that the Public Schools Act, 1890, was *intra vires* of the Provincial Legislature, inasmuch as it prejudicially affected a right or privilege with respect to denominational schools which the Roman Catholics had by law or practice in the province at the union. The court of Queen's Bench refused the application, being of opinion that the act was *intra vires*. The Supreme Court of Canada took a different

view, but upon appeal this Board reversed their decision, and restored the judgment of the Court of Queen's Bench.

Memorials and petitions were afterwards presented to the Governor General in Council on behalf of the Roman Catholic minority of Manitoba by way of appeal against the Education Acts of 1890. These memorials and petitions having been taken into consideration, a case in relation thereto was in pursuance of the provisions of the Supreme and Exchequer Courts Act referred by the Governor General in Council to the Supreme Court of Canada. The questions referred for hearing and consideration were the following:—

"(1) Is the appeal referred to in the said memorials and petitions, and asserted thereby, such an appeal as is admissible by subsection 3 of section 93 of the British North America Act, 1867, or by subsection 2 of section 22 of the Manitoba Act, 1870, chapter 3, Canada?

"(2) Are the grounds set forth in the petitions and memorials such as may be the subject of appeal under the authority of the subsections above referred to or either of them?

"(3) Does the decision of the Judicial Committee of the Privy Council in the cases of *Barrett vs. The City of Winnipeg*, and *Logan vs. The City of Winnipeg* dispose of or conclude the application for redress based on the contention that the rights of the Roman Catholic minority which accrued to them after the Union under the statutes of the province have been interfered with by the two statutes of 1890 complained of in the said petitions and memorials?

"(4) Does subsection 3 of section 93 of the British North America Act, 1867, apply to Manitoba?

"(5) Has His Excellency the Governor General in Council power to make the declarations or remedial orders which are asked for in the said memorials and petitions assuming the material facts to be as stated therein, or has His Excellency the Governor General in Council any other jurisdiction in the premises?

"(6) Did the Acts of Manitoba relating to education, passed prior to the session of 1890, confer on or continue to the minority 'a right or privilege in relation to education' within the meaning of subsection 2 of section 22 of the Manitoba Act, or establish a system of separate or dissentient schools, within the meaning of subsection 3 of section 93 of the British North America Act, 1867; if said section 93 be found applicable to Manitoba; and if so, did the two Acts of 1890 complained of, or either of them, affect any right or privilege of the minority in such a manner that an appeal will lie thereunder to the Governor General in Council?"

The learned judges of the Supreme Court were divided in opinion upon each of the questions submitted. They were all, however, by a majority of three judges out of five answered in the negative.

The Appeal to the Governor General in Council was founded upon the 22nd section of the Manitoba Act, 1870, and the 93rd section of the British North America Act, 1867. By the former of these statutes (which was confirmed and declared to be valid and effectual by an Imperial Statute) Manitoba was created "a province of the Dominion.

The 2nd section of the Manitoba Act enacts that after the prescribed day the British North America Act shall "except those parts thereof which are in the terms made or by reasonable intendment may be held to be specially applicable to or only to affect one, or more but not the whole of the provinces now composing the Dominion, and except so far as the same may be varied by this Act, be applicable to the province of Manitoba in the same way and to the like extent as they apply to the several provinces of Canada, and as if the province of Manitoba had been one of the provinces originally united by the said Act." It cannot be questioned therefore that section 93 of the British North America Act (save such parts of it as are specially applicable to some only of the provinces of which the Dominion was in 1870 composed) is made applicable to the province of Manitoba, except in so far as it is varied by the Manitoba Act. The 22nd section of that Statute deals with the same subject-matter as section 93 of the British North America Act. The 2nd subsection of this latter section

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may be discarded from consideration, as it is manifestly applicable only to the provinces of Ontario and Quebec. The remaining provisions closely correspond with those of section 22 of the Manitoba Act. The only difference between the introductory part and the 1st subsection of the two sections, is that in the Manitoba Act the words "or practice" are added after the word "law" in the 1st subsection.

The 3rd subsection of section 22 of the Manitoba Act is identical with the 4th subsection of section 93 of the British North America Act. The 2nd and 3rd subsections respectively are the same, except that in the 2nd subsection of the Manitoba Act, the words "of the legislature of the province or" are inserted before the words "any provincial authority," and that the 3rd subsection of the British North America Act commences with the words: "Where in any province a system of separate or dissentient schools exists by law at the union or is thereafter established by the legislature of the province." In view of this comparison, it appears to their Lordships impossible to come to any other conclusion than that the 22nd section of the Manitoba Act was intended to be a substitute for the 93rd section of the British North America Act. Obviously all that was intended to be identical has been repeated, and in so far as the provisions of the Manitoba Act differ from those of the earlier statute, they must be regarded as indicating the variations from those provisions intended to be introduced in the province of Manitoba.

In their Lordship's opinion, therefore, it is the 22nd section of the Manitoba Act, which has to be construed in the present case, though it is of course legitimate to consider the terms of the earlier Act, and to take advantage of any assistance they may afford in the construction of enactments with which they so closely correspond and which have been substituted for them.

Before entering upon a critical examination of the important section of the Manitoba Act, it will be convenient to state the circumstances under which that Act was passed, and also the exact scope of the decision of this Board in the case of *Barrett vs. The City of Winnipeg*, which seems to have given rise to some misapprehension. In 1867, the union of the provinces of Canada, Nova Scotia and New Brunswick took place. Among the obstacles which had to be overcome in order to bring about that union, none perhaps presented greater difficulty than the differences of opinion which existed with regard to the question of education. It had been the subject of much controversy in Upper and Lower Canada. In Upper Canada, a general system of undenominational education had been established, but with provision for separate schools to supply the wants of the Catholic inhabitants of that province. The 2nd subsection of section 93 of the British North America Act extended all the powers, privileges and duties which were then by law conferred and imposed in Upper Canada on the separate schools and school trustees of the Roman Catholic inhabitants of that province to the dissentient schools of the Protestant and Roman Catholic inhabitants of Quebec. There can be no doubt that the views of the Roman Catholic inhabitants of Quebec and Ontario, with regard to education, were shared by the members of the same communion in the territory which afterwards became the province of Manitoba. They regarded it as essential that the education of their children should be in accordance with the teachings of their church, and consider that such an education could not be obtained in public schools designed for all the members of the community alike, whatever their creed, but could only be secured in schools conducted under the influence and guidance of the authorities of their church. At the time, when the province of Manitoba became part of the Dominion of Canada, the Roman Catholic and Protestant populations in the province were about equal in number. Prior to that time, there did not exist in the territory then incorporated any public system of education. The several religious denominations had established such schools as they thought fit, and maintained them by means of funds voluntarily contributed by the members of their own communion. None of them received any State aid.

The terms upon which Manitoba was to become a province of the Dominion were matter of negotiation between representatives of the inhabitants of Manitoba and of the Dominion Government. The terms agreed upon, so far as education was concerned, must be taken to be embodied in the 22nd section of the Act of 1870. Their Lordships do not think that anything is to be gained by the inquiry how far the provisions of this

section placed the province of Manitoba in a different position from the other provinces, or whether it was one more or less advantageous. There can be no presumption as to the extent to which a variation was intended. This can only be determined by construing the words of the section according to their natural signification.

Among the very first measures passed by the Legislature of Manitoba was an Act to establish a system of education in the province. The provisions of that Act will require examination. It is sufficient for the present to say that the system established was distinctly denominational. This system, with some modifications, of the original scheme, the fruit of later legislation, remained in force until it was put an end to by the Acts which have given rise to the present controversy.

In Barrett's case the sole question raised was whether the Public Schools Act of 1890 prejudicially affected any right or privilege which the Roman Catholics by law or practice had in the province at the Union. Their Lordships arrived at the conclusion that this question must be answered in the negative. The only right or privilege which the Roman Catholics then possessed, either by law or in practice, was the right or privilege of establishing and maintaining for the use of members of their own church such schools as they pleased. It appeared to their Lordships that this right or privilege remained untouched, and therefore could not be said to be affected by the legislation of 1890. It was not doubted that the object of the first subsection of section 22 was to afford protection to denominational schools, or that it was proper to have regard to the intent of the legislature and the surrounding circumstances in interpreting the enactment. But the question which had to be determined was the true construction of the language used. The function of a tribunal is limited to construing the words employed: it is not justified in forcing into them a meaning which they cannot reasonably bear. Its duty is to interpret, not to enact. It is true that the construction put by this board upon the first subsection reduced within very narrow limits the protection afforded by that subsection in respect of denominational schools. It may be that those who were acting on behalf of the Roman Catholic community in Manitoba, and those who either framed or assented to the wording of that enactment, were under the impression that its scope was wider, and that it afforded protection greater than their Lordships held to be the case. But such considerations cannot properly influence the judgment of those who have judicially to interpret a statute. The question is, not what may be supposed to have been intended, but what has been said. More complete effect might in some cases be given to the intentions of the legislature, if violence were done to the language in which their legislation has taken shape, but such a course would on the whole be quite as likely to defeat as to further the object which was in view. Whilst, however, it is necessary to resist any temptation to deviate from sound rules of construction in the hope of more completely satisfying the intention of the legislature, it is quite legitimate where more than one construction of a statute is possible, to select that one which will best carry out what appears from the general scope of the legislation and the surrounding circumstances to have been its intention.

With these preliminary observations, their Lordships proceed to consider the terms of the 2nd and 3rd subsections of section 22 of the Act of 1870, upon the construction of which the questions submitted chiefly depend. For the reasons which have been given, their Lordships concur with the majority of the Supreme Court in thinking that the main issues are not in any way concluded either by the decision in Barrett's case or by any principles involved in that decision.

At the outset this question presents itself. Are the 2nd and 3rd subsections, as contended by the respondent, and affirmed by some of the judges of the Supreme Court, designed only to enforce the prohibition contained in the 1st subsection? The arguments against this contention appear to their Lordships conclusive. In the first place that subsection needs no further provision to enforce it. It imposes a limitation on the legislative powers conferred. Any enactment contravening its provisions is beyond the competency of the Provincial Legislature, and therefore null and void. It was so decided by this board in Barrett's case. A doubt was there suggested whether that appeal was competent, in consequence of the provisions of the 2nd subsection, but their Lordships were satisfied that the provisions of subsections 2 and 3 did not

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“operate to withdraw such a question as that involved in the case from the jurisdiction of the ordinary tribunals of the country.” It is hardly necessary to point out how improbable it is that it should have been intended to give a concurrent remedy by appeal to the Governor General in Council. The inconveniences and difficulties likely to arise, if this double remedy were open, are obvious. If, for example, the Supreme Court of Canada, and this committee on appeal, declared an enactment of the legislature of Manitoba relating to education to be *intra vires*, and the Governor General in Council on an appeal to him considered it *ultra vires*, what would happen? If the Provincial Legislature declined to yield to his view, as would almost certainly and most naturally be the case, recourse could only be had to the Parliament of the Dominion. But the Parliament of Canada is only empowered to legislate as far as the circumstances of the case require “for the due execution of the provisions” of the 22nd section. If it were to legislate in such a case as has been supposed, its legislation would necessarily be declared *ultra vires* by the courts which had decided that the provisions of the section had not been violated by the legislature of the province. If, on the other hand, the Governor General declared a provincial law to be *intra vires*, it would be an ineffectual declaration. It could only be made effectual by the action of the courts, which would have for themselves to determine the question which he decided, and if they arrived at a different conclusion and pronounced the enactment *ultra vires*, it would be nonetheless null and void, because the Governor General in Council had declared it *intra vires*. These considerations are of themselves most cogent to show that the 2nd subsection ought not to be construed as giving to parties aggrieved an appeal to the Governor General in Council concurrently with the right to resort to the courts in case the provisions of the 1st subsection are contravened, unless no other construction of the subsections be reasonably possible. The nature of the remedy, too, which the 3rd subsection provides, for enforcing the decision of the Governor General, strongly confirms this view. That remedy is either a provincial law or a law passed by the Parliament of Canada. What would be the utility of passing a law for the purpose merely of annulling an enactment which the ordinary tribunals would without legislation declare to be null, and to which they would refuse to give effect? Such legislation would indeed be futile.

So far the matter has been dealt with apart from an examination of the terms of the 2nd subsection itself. The considerations adverted to would seem to justify any possible construction of that subsection which would avoid the consequences pointed out. But when its language is examined, so far from presenting any difficulties, it greatly strengthens the conclusion suggested by the other parts of the section. The first subsection is confined to a right or privilege of a “class of persons” with respect to denominational education “at the union,” the 2nd subsection applies to laws affecting a right or privilege “of the Protestant or Roman Catholic minority” in relation to education. If the object of the 2nd subsection had been that contended for by the respondent, the natural and obvious mode of expressing such intention would have been to authorize an appeal from any Act of the Provincial Legislature affecting “any such right or privilege as aforesaid.” The limiting words “at the Union” are, however, omitted, for the expression “any class of persons” there is substituted “the Protestant or Roman Catholic minority of the Queen’s subjects,” and instead of the words “with respect to denominational schools,” the wider term “in relation to education” is used.

The 1st subsection invalidates a law affecting prejudicially the right or privilege of “any class” of persons, the 2nd subsection gives an appeal only where the right or privilege affected is that of the “Protestant or Roman Catholic minority.” Any class of the majority is clearly within the purview of the 1st subsection, but it seems equally clear that no class of the Protestant or Catholic majority would have a *locus standi* to appeal under the 2nd subsection, because its rights or privileges had been affected. Moreover, to bring a case within that subsection it would be essential to show that a right or privilege had been “affected.” Could this be said to be the case because a void law had been passed which purported to do something but was wholly ineffectual? To prohibit a particular enactment and render it *ultra vires*, surely prevents its affecting any rights.



It would do violence to sound canons of construction if the same meaning were to be attributed to the very different language employed in the two subsections.

In their Lordships' opinion the 2nd subsection is a substantive enactment, and is not designed merely as a means of enforcing the provision which precedes it. The question then arises, does the subsection extend to rights and privileges acquired by legislation subsequent to the union? It extends in terms to "any" right or privileges of the minority affected by an Act passed by the legislature, and would therefore seem to embrace all rights and privileges existing at the time when such Act was passed. Their lordships see no justification for putting a limitation on language thus unlimited. There is nothing in the surrounding circumstances, or in the apparent intention of the legislature, to warrant any such limitation. Quite the contrary. It was urged that it would be strange if an appeal lay to the Governor General in Council against an Act passed by the Provincial Legislature, because in abrogated rights conferred by previous legislation, whilst if there had been no previous legislation, the Acts complained of would not only have been *intra vires*, but could not have afforded any ground for any appeal. There is no doubt force in this argument, but it admits, their Lordships think, of an answer.

Those who were stipulating for the provisions of section 22 as a condition of the union, and those who gave their legislative assent to the act by which it was brought about, had in view the perils then apprehended. The immediate adoption by the legislature of an educational system obnoxious either to Catholics or Protestants would not be contemplated as possible. As has been already stated, the Roman Catholics and Protestants in the province were about equal in number. It was impossible at that time for either party to obtain legislative sanction to a scheme of education obnoxious to the other. The establishment of a system of public education, in which both parties would concur was probably then in immediate prospect. The legislature of Manitoba first met on the 15th of March, 1871. On the 3rd of May following, the Education Act of 1871 received the royal assent. But the future was uncertain. Either Roman Catholics or Protestants might become the preponderating power in the legislature, and it might under such conditions be impossible for the minority to prevent the creation at the public cost of schools which, though acceptable to the majority, could only be taken advantage of by the minority on the terms of sacrificing their cherished convictions. The change to a Roman Catholic system of public schools would have been regarded with as much distaste by the Protestants of the province as the change to an unsectarian system was by the Catholics.

Whether this explanation be the correct one or not, their Lordships do not think that the difficulty suggested is a sufficient warrant for departing from the plain meaning of the words of the enactment, or for refusing to adopt the construction which apart from this objection would seem to be the right one.

Their Lordships being of opinion that the enactment which governs the present case is the 22nd section of the Manitoba Act, it is unnecessary to refer at any length to the arguments derived from the provisions of section 93 of the British North America Act. But in so far as they throw light on the matter, they do not in their Lordships' opinion weaken, but rather strengthen the views derived from a study of the later enactment. It is admitted that the 3rd and 4th subsections of section 93 (the latter of which is, as has been observed, identical with subsection 3, of section 22 of the Manitoba Act) were not intended to have effect merely when a provincial legislature had exceeded the limit imposed on its powers by subsection 1, for subsection 3 gives an appeal to the Governor General, not only where a system of separate or dissentient schools existed in a province at the time of the union, but also where in any province such a system was "thereafter established by the legislature of the province." It is manifest that this relates to a state of things created by post-union legislation. It was said it refers only to acts or decisions of a "provincial authority," and not to acts of a provincial legislature. It is unnecessary to determine this point, but their Lordships must express their dissent from the argument that the insertion of the words "of the legislature of the province" in the Manitoba Act, show that in the British North America Act it could not have been intended to comprehend the legislatures under the words "any provin-

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cial authority." Whether they be so comprehended or not, has no bearing on the point immediately under discussion.

It was argued that the omission from the 2nd subsection of section 22 of the Manitoba Act of any reference to a system of separate or dissentient schools "thereafter established by the legislature of the province" was unfavourable to the contention of the appellants. This argument met with some favour in the court below. If the words with which the 3rd subsection of section 93 commences had been found in subsection 2, of section 22 of the Manitoba Act, the omission of the following words would no doubt have been important. But the reason for the difference between the subsections is manifest. At the time the Dominion Act was passed a system of denominational schools adapted to the demands of the minority existed in some provinces, in others it might thereafter be established by legislation, whilst in Manitoba, in 1870, no such system was in operation, and it could only come into existence by being "thereafter established." The words which preface the right of appeal in the Act creating the Dominion would therefore have been quite inappropriate in the Act by which Manitoba became a province of the Dominion. But the terms of the critical subsection of that Act, are, as has been shown, quite general, and not made subject to any condition or limitation.

Before leaving this part of the case, it may be well to notice the argument urged by the respondent that the construction which their Lordships have put upon the 2nd and 3rd subsections of section 22 of the Manitoba Act is inconsistent with the power conferred upon the legislature of the province to "exclusively make laws in relation to education." The argument is fallacious. The power conferred is not absolute but limited. It is exercisable only "subject and according to the following provisions." The subsections which follow, therefore, whatever be their true construction, define the conditions under which alone the Provincial Legislature may legislate in relations to education, and indicate the limitations imposed on, and the exceptions from their power of exclusive legislation. Their right to legislate is not indeed, properly speaking, exclusive, for in the case specified in subsection 3, the Parliament of Canada is authorized to legislate on the same subject. There is, therefore, no such inconsistency as was suggested.

The learned Chief Justice of the Supreme Court was much pressed by the consideration that there is an inherent right in a legislature to repeal its own legislative Acts and that "every presumption must be made in favour of the constitutional right of a legislative body to repeal the laws which it has itself enacted." He returns to this point more than once in the course of his judgment, and lays down as a maxim of constitutional construction that an inherent right to do so cannot be deemed to be withheld from a legislative body having its origin in a written constitution, unless the constitution in express words takes away the right, and he states it as his opinion that in construing the Manitoba Act, the court ought to proceed on this principle, and to hold the legislature of that province to have absolute powers over its own legislation, untrammelled by any appeal to federal authority, unless it could find some restriction of its rights in that respect in express terms in the Constitutional Act.

Their Lordships are unable to concur in the view that there is any presumption which ought to influence the mind one way or the other. It must be remembered that the Provincial Legislature is not in all respects supreme within the province. Its legislative power is strictly limited. It can deal only with matters declared to be within its cognizance by the British North America Act, as varied by the Manitoba Act. In all other cases, legislative authority rests with the Dominion Parliament. In relation to the subjects specified in section 92 of the British North America Act, and not falling within those set forth in section 91, the exclusive power of the Provincial Legislature may be said to be absolute. But this is not so as regards education, which is separately dealt with, and has its own code, both in the British North America Act and in the Manitoba Act. It may be said, to be anomalous, that such a restriction as that in question should be imposed on the free action of a legislature, but is it more anomalous than to grant to a minority who are aggrieved by legislation an appeal from the legislature to the executive authority? And, yet, this right is expressly and beyond all

controversy conferred. If, upon the natural construction of the language used, it should appear that an appeal was permitted under circumstances involving a fetter upon the power of a provincial legislature to repeal its own enactments, their Lordships see no justification for a leaning against that construction, nor do they think it makes any difference whether the fetter is imposed by express words or by necessary implication.

In truth, however, to determine that, an appeal lies to the Governor General in Council in such a case as the present, does not involve the proposition that the Provincial Legislature was unable to repeal the laws which it had passed. The validity of the repealing Act is not now in question, nor that it was effectual. If the decision be favourable to the appellants, the consequence, as will be pointed out presently, will by no means necessarily be the repeal of the Acts of 1890, or the re-enactment of the prior legislation.

Bearing in mind the circumstances which existed in 1870, it does not appear to their Lordships an extravagant notion that in creating a legislature for the province with limited powers it should have been thought expedient, in case either Catholics or Protestants became preponderant, and rights which had come into existence under different circumstances were interfered with, to give the Dominion Parliament power to legislate upon matters of education so far as was necessary to protect the Protestant or Catholic minority as the case might be.

Taking it then to be established that the 2nd subsection of section 22 of the Manitoba Act extends to rights and privileges of the Roman Catholic minority acquired by legislation in the province after the union, the next question is, whether any such right or privilege has been affected by the Acts of 1890? In order to answer this question, it will be necessary to examine somewhat more closely than has hitherto been done the system established by the earlier legislation, as well as the change effected by those Acts.

The Manitoba School Act of 1871, provided for a Board of Education of not less than 10 nor more than 14 members, of whom one-half were to be Protestants and the other half Catholics. The two sections of the Board might meet at any time separately. Each section was to choose a chairman, and to have under its control and management the discipline of the schools of the section. One of the Protestant members was to be appointed superintendent of the Protestant schools, and one of the Catholic members superintendent of the Catholic schools, and these two were to be the joint secretaries of the Board, which was to select the books to be used in the schools, except those having reference to religion or morals which were to be prescribed by the sections respectively. The legislative grant for common school education was to be appropriated, one moiety to support the Protestant, the other moiety the Catholic schools. Certain districts in which the population was mainly Catholic were to be considered Catholic school districts, and certain other districts where the population was mainly Protestant were to be considered Protestant school districts. Every year a meeting of the male inhabitants of each district, summoned by the superintendent of the section to which the district belonged, was to appoint trustees, and to decide whether their contributions to the support of the school were to be raised by subscription, by a collection of a rate per scholar, or by assessment on the property of the district. They might also decide to erect a school-house, and that the cost of it should be raised by assessment. In case the father or guardian of a school child was a Protestant in a Catholic district or *vice versa*, he might send the child to the school of the nearest district of the other section, and in case he contributed to the school the child attended, a sum equal to what he would have been bound to pay if he had belonged to that district, he was exempt from payment to the school of the district in which he lived.

Acts amending the education law in some respects were passed in subsequent years, but it is not necessary to refer to them, as in 1881 the Act of 1871 and these amending Acts were repealed. The Manitoba School Act, 1881, followed the same general lines as that of 1871. The number of the Board of Education was fixed at not more than 21, of whom 12 were to be Protestants and 9 Catholics. If a less number were appointed the same relative proportion was to be observed. The Board, as before, was to resolve itself into two sections, Protestant and Catholic, each of which was to have the control

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of the schools of its section, and all the books to be used in the schools under its control were now to be selected by each section. There were to be, as before, a Protestant and a Catholic superintendent. It was provided that the establishment of a school district of one denomination should not prevent the establishment of a school district of the other denomination in the same place, and that a Protestant and Catholic district might include the same territory in whole or in part. The sum appropriated by the legislature for common school purposes was to be divided between the Protestant and Roman Catholic sections of the Board in proportion to the number of children between the ages of five and fifteen residing in the various Protestant and Roman Catholic school districts in the province where schools were in operation. With regard to local assessments for school purposes it was provided that the ratepayers of a school district should pay their respective assessments to the schools of their respective denominations, and in no case was a Protestant ratepayer to be obliged to pay for a Catholic school, or a Catholic ratepayer for a Protestant school.

The scheme embodied in this Act was modified in some of its details by later Acts of the legislature, but they did not affect in substance the main features, to which attention has been called. While traces of the increase of the Protestant relatively to the Catholic population may be seen in the course which legislation took, the position of the Catholic and Protestant portions of the community in relation to education was not substantially altered, though the State aid, which at the outset was divided equally between them, had of course to be adjusted and made proportionate to the school population which each supplied.

Their Lordships pass now to the Department of Education and Public Schools Act, 1890, which certainly brought a great change. Under the former these Roman Catholics were not entitled as such to any representation on the Board of Education or on the Advisory Board, which was to authorize text books for the use of pupils and to prescribe the forms of religious exercises to be used in schools. All Protestant and Catholic school districts were to be subject to the provisions of the Public Schools Act. The public schools were all to be free, and to be entirely non-sectarian. No religious exercises were to be allowed unless conducted according to the regulations of the Advisory Board, and with the authority of the school trustees for the district. It was made the duty of the trustees to take possession of all public school property which had been acquired or given for public school purposes in the district. The municipal council of every city, town and village, was directed to levy and collect upon the taxable property within the municipality such sums as might be required by the public school trustees for school purposes. No municipal council was to have the right to exempt any property whatever from school taxation. And it was expressly enacted that any school not conducted according to all the provisions of the Act, or the regulations of the Department of Education, or the Advisory Board, should not be deemed a public school within the meaning of the law, and that such school should not participate in the legislative grant.

With the policy of these Acts their Lordships are not concerned, nor with the reasons which led to their enactment. It may be that as the population of the province became in proportion more largely Protestant, it was found increasingly difficult, especially in sparsely populated districts, to work the system inaugurated in 1871, even with the modifications introduced in later years. But whether this be so or not is immaterial. The sole question to be determined is whether a right or privilege which the Roman Catholic minority previously enjoyed has been affected by the legislation of 1890. Their Lordships are unable to see how this question can receive any but an affirmative answer. Contrast the position of the Roman Catholics prior and subsequent to the Acts from which they appeal. Before these passed into law there existed denominational schools, of which the control and management were in the hands of Roman Catholics, who could select the books to be used and determine the character of the religious teaching. These schools received their proportionate share of the money contributed for school purposes out of the general taxation of the province, and the money raised for these purposes by local assessment was, so far as it fell upon Catholics, applied only towards the support of Catholic schools. What is the position of the Roman Catholic minority under the Acts of 1890? Schools of their own denomination, con-

ducted according to their views, will receive no aid from the State. They must depend entirely for their support upon the contributions of the Roman Catholic community, while the taxes out of which State aid is granted to the schools provided for by the Statute fall alike on Catholics and Protestants. Moreover, while the Catholic inhabitants remain liable to local assessment for school purposes, the proceeds of that assessment are no longer destined to any extent for the support of Catholic schools, but afford the means of maintaining schools which they regard as no more suitable for the education of Catholic children than if they were distinctively Protestant in their character.

In view of this comparison, it does not seem possible to say that the rights and privileges of the Roman Catholic minority in relation to education, which existed prior to 1890, have not been affected.

Mr. Justice Taschereau says that the legislation of 1890, having been irrevocably held to be *intra vires*, cannot have "illegally" affected any of the rights or privileges of the Catholic minority. But the word "illegally" has no place in the subsection in question. The appeal is given if the rights are in fact affected.

It is true that the religious exercises prescribed for public schools are not to be distinctively Protestant, for they are to be "non-sectarian," and any parent may withdraw his child from them. There may be many too, who share the view expressed in one of the affidavits in Barrett's case, that there should not be any conscientious objections on the part of Roman Catholics to attend such schools, if adequate means be provided elsewhere of giving such moral and religious training as may be desired. But all this is not to the purpose. As a matter of fact, the objection of Roman Catholics to schools such as alone receive State aid under the Act of 1890 is conscientious and deeply rooted. If this had not been so, if there had been a system of public education acceptable to Catholics and Protestants alike, the elaborate enactments which have been the subject of so much controversy and consideration would have been unnecessary. It is notorious that there were acute differences of opinion between Catholics and Protestants on the education question prior to 1870. This is recognized and emphasized in almost every line of those enactments. There is no doubt either what the points of difference were, and it is in the light of these that the 22nd section of the Manitoba Act of 1870, which was in truth a parliamentary compact, must be read.

For the reasons which have been given, their Lordships are of opinion that the 2nd subsection of section 22 of the Manitoba Act is the governing enactment, and that the appeal to the Governor General in Council was admissible by virtue of that enactment on the grounds set forth in the memorials and petitions, inasmuch as the Acts of 1890 affected rights or privileges of the Roman Catholic minority in relation to education within the meaning of that subsection. The further question is submitted whether the Governor General in Council has power to make the declarations or remedial orders asked for in the memorials or petitions, or has any other jurisdiction in the premises. Their Lordships have decided that the Governor General in Council has jurisdiction, and that the appeal is well founded, but the particular course to be pursued must be determined by the authorities to whom it has been committed by the statute. It is not for this tribunal to intimate the precise steps to be taken. Their general character is sufficiently defined by the 3rd subsection of section 22 of the Manitoba Act.

It is certainly not essential that the Statutes repealed by the Act of 1890 should be re-enacted, or that the precise provisions of these Statutes should again be made law. The system of education embodied in the Acts of 1890 no doubt commends itself to, and adequately supplies the wants of the great majority of the inhabitants of the province. All legitimate grounds of complaint would be removed if that system were supplemented by provisions which would remove the grievance upon which the appeal is founded, and were modified so far as might be necessary to give effect to these provisions.

Their Lordships will humbly advise Her Majesty that the questions submitted should be answered in the manner indicated by the views which they have expressed.

There will be no costs of this appeal.

## IMPERIAL ORDER IN COUNCIL

[L.S.]

At the Court at Osborne House, Isle of Wight,  
The 2nd day of February, 1895.

*Present :*

THE QUEEN'S MOST EXCELLENT MAJESTY.

Lord President,

Lord Kensington,

Marquess of Ripon,

Mr. Cecil Rhodes.

Lord Chamberlain,

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council, dated the 29th January, 1895, in the words following, viz. :—

“Your Majesty having been pleased by Your General Order in Council of the 23rd November, 1893, to refer unto this Committee the matter of an Appeal from the Supreme Court of Canada, between Gerald F. Brophy, Noé Chevrier, Henry Napoléon Boire, Roger Goulet, Patrick O'Connor, Francis McPhillips, Frank J. Clark, Joseph Lecomte, Michael Hughes, Henry Brownrigg, Frank Brownrigg, Theophilus Tessier, L. Arthur Leveque, Edmond Trudel, Joseph Honoré Octavien Lambert, Jean Baptiste Poirier, George Couture, J. Ernest Cyr, François Jean David Dussault, Charles Edouard Masse, François Hardis, Joseph Buron, Louis Fournier, Phileas Trudeau, Edouard Guilbault, Romuald Gilbeault, Alphonse Phaneuf, W. Cleophas German, Edward R. Lloyd, Louis Laventure and Louis J. Collin, all of the province of Manitoba, in the Dominion of Canada, on behalf of themselves, and of all other persons forming the Roman Catholic minority of Her Majesty's subjects in the said province, appellants, and the Attorney General of Manitoba, respondent, and likewise the humble petition of the above named appellants, setting forth that this is an appeal from certain opinions pronounced by the Judges of the Supreme Court of Canada, on the 20th February, 1894 : that the case in reference to which such opinions were rendered, was on the 7th July, 1893, referred by the Governor General of Canada in Council to the Supreme Court of Canada for hearing and consideration pursuant to the provisions of an Act intituled “An Act respecting the Supreme and Exchequer Courts” (Revised Statutes of Canada, Cap. 135) as amended by an Act of Canada, passed in 1891 (54-55 Vic. cap. 25) : that the questions involved in the case, and in this appeal turn upon the construction of certain sections of “The British North America Act, 1867” and of “The Manitoba Act 1870” and upon the effect of certain statutes of the province of Manitoba, in relation to education in that province ; that the following questions were by the said case submitted for the opinion of the Supreme Court :—

“(1) Is the appeal referred to in the said Memorials and Petitions, and asserted thereby, such an appeal as is admissible by subsection 3, of section 93, of the British North America Act, 1867, or by subsection 2 of section 22 of the Manitoba Act, 33 Victoria (1870), Cap. 3, Canada ?”

“(2) Are the grounds set forth in the Petitions and Memorials such as may be the subject of appeal under the authority of the subsections above referred to, or either of them?”

“(3) Does the decision of the Judicial Committee of the Privy Council in the cases of *Barrett vs. The City of Winnipeg*, and *Logan vs. The City of Winnipeg*, dispose of or conclude the application for redress based on the contention that the rights of the Roman Catholic minority, which accrued to them after the Union under the statutes of the Province, have been interfered with by the two Statutes of 1890, complained of in the said Petitions and Memorials?”

“(4) Does subsection 3 of section 93 of the British North America Act, 1867, apply to Manitoba?”

“(5) Has His Excellency the Governor General in Council power to make the declarations or remedial orders which are asked for in the said Memorials and Petitions, assuming the material facts to be as stated therein, or has His Excellency the Governor General in Council any other jurisdiction in the premises?”

“(6) Did the Acts of Manitoba relating to education, passed prior to the Session of 1890, confer on or continue to the minority a ‘right or privilege in relation to education’ within the meaning of subsection 2 of section 22 of the Manitoba Act, or establish a system of separate or dissentient schools within the meaning of subsection 3 of section 93 of the British North America Act, 1867, if said section 93 be found to be applicable to Manitoba; and if so, did the two Acts of 1890 complained of, or either of them, affect any right or privilege of the minority in such a manner that an appeal will lie thereunder to the Governor General in Council?” that Counsel for the Appellants and for other Roman Catholic subjects of Her Majesty in the province of Manitoba and Counsel for the province of Manitoba appeared before the Supreme Court as did also the Solicitor General for Canada who appeared to submit the case on behalf of Her Majesty’s Crown: that the counsel for the province of Manitoba not desiring to be heard, the Supreme Court pursuant to section 4 of the Act of 1891, hereinbefore referred to, requested counsel to argue the case in the interest of the said province and counsel thereupon appeared and argued the case for the said province as did also counsel for the appellants and other Roman Catholics as aforesaid, but the Solicitor General for Canada did not desire to be heard: that the case came on for argument before five judges of the Supreme Court who on the 20th February, 1894, delivered their opinions thereon in the manner provided by the statute: that in the result the opinions of the judges of the Supreme Court showed a majority of three judges out of five for a negative answer to all the six questions submitted for the opinion of the Supreme Court: that the appellants feeling aggrieved by the said opinions presented a petition to Your Majesty in Council praying for special leave to appeal therefrom to Your Majesty in Council and by Your Majesty’s Order in Council of the 27th June, 1894, leave to appeal was granted accordingly upon the condition that the appellants should deposit the sum of £300 sterling in the registry of the Privy Council, as security for costs: that the said sum was deposited accordingly and humbly praying that Your Majesty in Council, will be pleased to take their said appeal into consideration and that the said opinions of the judges of the Supreme Court of Canada of the 20th February, 1894, may be reversed or varied or for other relief in the premises.”

“The Lords of the committee in obedience to Your Majesty’s said general order of reference, have taken the said humble petition and appeal into consideration, and having heard counsel for the parties on both sides, their lordships do this day agree humbly to report to Your Majesty as their opinion that the said questions hereinbefore set forth ought to be answered as follows:—

“(1) In answer to the first question:—That the appeal referred to in the said memorials and petitions, and asserted thereby is such an appeal as is admissible under subsection 2 of section 22 of the Manitoba Act, 33 Vict. (1870), c. 3, Canada.

“(2) In answer to the second question:—That grounds are set forth in the petitions and memorials, such as may be the subject of appeal under the authority of the subsection of the Manitoba Act immediately above referred to.

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"(3) In answer to the third question :—That the decision of the Judicial Committee of the Privy Council in the cases of *Barrett v. The City of Winnipeg*, and *Logan v. The City of Winnipeg* does not dispose of, or conclude, the application for redress based on the contention that the rights of the Roman Catholic minority, which accrued to them after the Union under the Statutes of the Province, have been interfered with by the two Statutes of 1890 complained of in the said petitions and Memorials.

"(4) In answer to the fourth question :—That subsection 3 of section 93 of the British North America Act, 1867, does not apply to Manitoba.

"(5) In answer to the fifth question :—That the Governor General in Council has jurisdiction and the appeal is well founded, but that the particular course to be pursued must be determined by the authorities to whom it has been committed by the Statute; that the general character of the steps to be taken is sufficiently defined by subsection 3 of section 22 of the Manitoba Act, 1870.

"(6) In answer to the sixth question :—That the Acts of Manitoba relating to education passed prior to the session of 1890 did confer on the minority a right or privilege in relation to education within the meaning of subsection 2 of section 22 of the Manitoba Act, which alone applies; that the two Acts of 1890 complained of did affect a right or privilege of the minority in such a manner that an appeal will lie thereunder to the Governor General in Council.

"And in case Your Majesty should be pleased to approve of this report, then their Lordships do direct that the parties do bear their own costs of this appeal, and that the sum of £300 sterling so deposited by the appellants as aforesaid, be repaid to them."

Her Majesty having taken the said report into consideration, was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the recommendations and directions therein contained be punctually observed, obeyed, and carried into effect in each and every particular. Whereof the Governor General of the Dominion of Canada for the time being, and all other persons whom it may concern are to take notice and govern themselves accordingly.

C. L. PEEL.



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IN HER MAJESTY'S PRIVY COUNCIL

FOR THE

DOMINION OF CANADA

ARGUMENT *RE* SCHOOLS IN MANITOBA

OTTAWA, 26th February, 1895.

The Privy Council met at 11 o'clock a. m.

*Present* :—Sir Mackenzie Bowell, Sir Adolphe Caron, Hon. Mr. Foster, Hon. Mr. Patterson, Hon. Mr. Haggart, Hon. Mr. Ouimet, Sir Charles Hibbert Tupper, Hon. Mr. Ives, Hon. Mr. Daly, Hon. Mr. Angers, Hon. Mr. Dickey, and Hon. Mr. Montague.

SIR MACKENZIE BOWELL.—We are prepared to hear the continuation of the argument of Mr. Ewart on this matter. It will be remembered that he spoke at a previous meeting of the Council, and he will now go on.

MR. MCCARTHY.—Mr. President and gentlemen of the Privy Council, I appear here for the province of Manitoba, and before the argument is entered upon, I desire to state on behalf of the Government of Manitoba that they have had no opportunity of making any preparation for this argument, that the notice of this meeting was only received by them by telegraph on Saturday week. As you know, the Provincial Government are now busily engaged in the work of conducting the session; under the circumstances they say that there is no possibility for them to prepare an argument, or to give that attention to the matter which its importance demands. I am desired, therefore by the Attorney General "to protest," to use his own language, "and most vigorously, against the absolutely short notice which has been given." I do that now respectfully, before the argument is entered upon, as of course it would not be fair to my learned friend, who appears for the minority, to allow him make his argument, and then for me to make this statement.

MR. EWART.—On behalf of the Roman Catholic minority, we will not object to any reasonable postponement my learned friend may ask for the purpose of preparing his case.

But as he has not indicated the length of the postponement he desires, I am unable to say whether we will oppose his request or not. If it is a reasonably short postponement for the purpose of preparation, I will not object.

Sir MACKENZIE BOWELL.—I was going to ask you, Mr. McCarthy, what time would you require to prepare your argument?

Mr. MCCARTHY.—It is not so much for myself I am speaking as for the Attorney General; and what I rather gathered from him, though he has not said so in words, was that he desired to have been here himself. It is a matter which involves the educational system of the province, a question which, of course, has attracted a great deal of attention in Manitoba, and has been a subject of discussion in more than one session. I think what he would like is such a postponement as would enable him to go on with the work of the session and to come here after the session. You are aware, of course, that Mr. Greenway, the First Minister, is ill, and the leadership of the House, I suppose, devolves upon Mr. Sifton, the Attorney General. He instructed me that he telegraphed to this effect on Saturday, to the Secretary of State.

Mr. EWART.—I would object most strenuously to any postponement over the present session of the legislature. You are aware that there has already been very great delay in reaching a solution of this case, and that the difficulties that the minority in Manitoba have been labouring under, have been almost insurmountable, extending so far as that they have been unable to maintain a great many of their schools, and consequently the children go without that education which my clients believe they ought to have. If the postponement goes over this session, it will be impossible to make much progress with the case until the local legislature meets again a year from now; because, as you are all aware, if this government decides, as I hope it will, to make a request to the Manitoba Government, the first step is to submit to them some law which it is proposed they should pass; for after that submission took place the Dominion Parliament could do nothing until a refusal came from the Local Government. The delay, therefore, which my learned friend asks for, is not merely for a few days or a few weeks, it is a delay for one year. I think, therefore, that the circumstances mentioned by my learned friend are not such as to recommend his proposition to you. Indeed, we have in the Queen's Speech, in opening the Local Legislature a few days ago, this statement:

"Whether or not a demand will be made by the Federal Government that that Act shall be modified, is not yet known to my government; but it is not the intention of my government in any way to recede from its determination to uphold the present public school system which, if left to its own operation, would in all probability, soon become universal throughout the province."

I think those who are responsible for that statement cannot urge as a reason for postponing this case twelve months, that they have not had time to consider their position, for they have had time to consider their position.

Mr. MCCARTHY.—That is not our ground.

Mr. EWART.—Nor can they urge, I think, that it is necessary for a proper presentation of their case that the Attorney General should be here. They have told you in advance what they intend to do, and surely my learned friend need not repeat that. I do not think it can be urged that they have had no opportunity for preparation. It is extraordinary that they have had no time to prepare themselves when this question has been before them for the last four years; and my learned friend has certainly had plenty of time to consider it, for he has been instructing the people of Canada upon this subject for the last two years; he is therefore perfectly qualified, I should think, to make such an argument as can be made on behalf of the Manitoba Government.

Sir MACKENZIE BOWELL.—Have you any idea, Mr. McCarthy, as to the length of the session?

Mr. MCCARTHY.—My learned friend can say better than I with regard to that.

Mr. EWART.—It is not expected to be very long this time.

Sir MACKENZIE BOWELL.—Have they intimated to you the probable length of the session?

Mr. MCCARTHY.—No.

Sir MACKENZIE BOWELL.—If it is put off until after the session, it will delay action for a year, whatever that may be.

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Mr. McCARTHY.—That will undoubtedly be the effect of it. What I desire to say is that the Attorney General did not ask for any particular postponement, but the tenor of his letter is that he desires to present the case himself. He looks upon it as a matter of great importance—not exactly with the same view as my learned friend has presented. He does not want, of course, a conflict with the Dominion. Although it is plain enough that the province does not intend to obey any remedial order that may be made, at the same time it is desirable there should be no conflict, and consequently, in order that I may show to this Council, if possible, that the Council ought not to interfere, I require to have a minuter knowledge of the old school system and of the practical working of the present system, than I am able to afford now, and it was impossible for me, with the time at my disposal, to have mastered the subject. I am not going to answer the personal observations of my learned friend; I hope personalities will be kept out of the contest. I appear here as counsel for the Manitoba Government, I do not appear as a public man; and I desire to present the case without regard to any other considerations than those affecting the province. It is a matter affecting the province only, and I have not yet been able to acquaint myself sufficiently with the practical working of the late system as contrasted with the working of the present system.

Hon. Mr. Ives.—Might I ask, in case the adjournment is not made as you suggest, would a short adjournment be of any particular advantage? If not, you might as well go on now as to go on a week from now.

Mr. McCARTHY.—The only advantage of a short adjournment would be to enable me to communicate with the Attorney General and get specific instructions on matters as to which I may say I have no information, and I do not know where I can get it. I only received a lot of papers on Saturday at mid-day; and I find that by some oversight, papers which ought to have been included in the parcel were not included. The object of an adjournment would be to enable me to consult with the Manitoba Government, in other words, to receive instructions. I have got some instructions here, three or four sheets of paper, merely saying that they inclose me so many papers, and that they have not had time to make any special preparation for the argument.

Sir MACKENZIE BOWELL.—I may say that the Manitoba Government has had precisely the same notice as the minority, having been notified by telegraph, anxious as we were to be in a position to take action one way or the other. What length of time, the shortest time, would you think it necessary to enable you to have a consultation with the Attorney General of Manitoba?

Mr. McCARTHY.—It seems to me it would probably be necessary for some person to come from there here, or for some person to go from here there, in case the Council thought fit to allow an adjournment of sufficient length. I may say that when I saw in the press this morning that there was a possibility that the matter might be postponed, I telegraphed at once to Mr. Sifton to know whether he would care for any shorter postponement than a postponement till after the session. I would be better able to answer when I get that reply.

Hon. Mr. DALY.—A letter leaving here to-morrow morning will reach Winnipeg at 10 o'clock on Friday.

Mr. McCARTHY.—Mr. Ewart says two or three days. Then, of course, they would want two or three days for preparation, to get the papers together, and another two or three days for the papers to come back.

Sir MACKENZIE BOWELL.—I may say on behalf of the Council that we could not think for a moment of consenting to an adjournment till after the session. Any reasonable adjournment, such as Mr. Ewart has agreed to, we would be quite willing to accede to. The Council will consult upon the length of the adjournment, and give our decision at three o'clock this afternoon.

At 3 o'clock p.m. the Privy Council met again.

Sir MACKENZIE BOWELL.—Mr. McCarthy, will you kindly inform us of the nature of the reply you have received from the Manitoba Government?

Mr. McCARTHY.—I have received a communication from the Attorney General in which he says: "Postponement of sufficient length to be of assistance in the preparation of the argument, accepted. Otherwise, proceed." I think that, taking three days to communicate with them and three days to get a reply, allowing a day or two to spare, probably Thursday next would be a convenient time, a time that would be of some service. That would be eight days.

Sir MACKENZIE BOWELL.—Could you not telegraph them to send the Superintendent of Education down here, or any one connected with this matter?

Mr. McCARTHY.—I am not able to say as to that. In a draft communication I have prepared, I make the suggestion that some official from the Educational Department should come. The 7th would do in a sense, but some accident might occur to cause delay.

Mr. EWART.—I am afraid that would be too long. If we could be sure that the Legislature would remain in session a sufficient time after that to enable them to consider anything that might go to them from this Government, I would make no objection at all. But, as I was informed before I came away that the session would be extremely short, I am afraid that if there is a delay now of even a week, it will defeat our purpose. It seems to me my learned friend might act upon the suggestion of Sir Mackenzie Bowell, and send a telegram to bring down the Superintendent of Education with the papers required, and he could be here in three days. Then, giving Mr. McCarthy a day to consult with him, we might get on this week.

Hon. Mr. OUMET.—Would not Monday next be a reasonable time?

Mr. McCARTHY.—It could not be earlier than Monday.

Sir MACKENZIE BOWELL.—Would Monday suit you?

Mr. McCARTHY.—I am not speaking personally at all. Of course, I want to meet the views of the Council as far as I possibly can.

Sir MACKENZIE BOWELL.—We will adjourn till Monday at 11 a.m.

OTTAWA, 4th March, 1895.

The Privy Council met at 11 o'clock a.m., in the Railway Committee Room of the House of Commons.

*Present*.—Sir Mackenzie Bowell, Sir Adolphe Caron, Hon. Mr. Costigan, Sir Charles Hibbert Tupper, Hon. Mr. Foster, Hon. Mr. Haggart, Hon. Mr. Oumet, Hon. Mr. Daly, Hon. Mr. Angers, Hon. Mr. Ives, Hon. Mr. Dickey, and Hon. Mr. Montague.

Sir MACKENZIE BOWELL.—Mr. Ewart, we are ready to hear your argument.

Mr. EWART.—Hon. gentlemen of the Privy Council: Prior to the union with Canada of Rupert's Land and the North-west Territories in 1870, there were in the vicinity of the Red River about 12,000 settlers, of whom half were Roman Catholics and the other half Protestants. These people and their fathers had for many years lived happily and contentedly together under the paternal control of the Hudson's Bay Company. This era was, however, to come to a close, and by union with Canada the territory was to undergo a complete transformation. Railways, immigration, and the doubtful blessings of a written constitution were to take the place of hunting, isolation and patriarchal government. It was a great and momentous change, and the settlers naturally desired to know beforehand what was to be the exact nature of it; what was to be their position with reference to the ownership of the land; what compensation was to be given to them for the extinction of the Indian title; what sort of government they were to have; and what constitutional guarantees were to be provided with reference to those subjects of legislation which both English and French, Protestant and Roman Catholic, had always thought it proper to

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provide safeguards. With almost inconceivable folly no satisfaction of any kind was given to the settlers, indeed no communication was had with them upon any of the subjects. In Colonel Wolseley's language : "No attempt was made by the Ottawa Government to conciliate their newly acquired subjects. \* \* \* No explanations were made as to what was to be the policy of Canada in its dealings with Rupert's Land. \* \* \* Unfortunately the arrangement entered into had an air of purchase about it, and a cry resounded throughout the North-west that its inhabitants were being bought and sold like so many cattle."

So far from conciliating the settlers or explaining matters to them, the Canadian Government sent forward surveyors to plot out the country into townships, and they and some other Canadians staked out farms for themselves, "which they declared they meant to claim as soon as the new Governor had arrived"—so Lord Wolseley tells us. This was more than the settlers could stand. They accordingly stopped the surveys, and proceeded in the most formal manner, and with the sanction of the Governor of the Hudson's Bay Company, to form a Legislative Assembly. This Assembly did not consist of a few illiterate half-breeds as has been so often said. One-half of it was composed of English-speaking settlers, and among them were some of the most notable men of the locality—the present Senator Sutherland was one of them.

Eventually retracing her steps, Canada sent to Red River three commissioners, who prevailed upon the people to send delegates to Ottawa, to negotiate as to the terms upon which the union should be accomplished. These delegates were Judge Black, Mr. Alfred Scott, and the Rev. Father Ritchot, and they took with them a list or bill of rights containing the demands of the people. The seventh clause of this bill of rights was as follows :—

"7. That the schools be separate, and that the public money for schools be distributed among the different religious denominations in proportion to their respective population according to the system of the province of Quebec."

This demand was made as much on behalf of the Protestants as of the Roman Catholics, for it was not then known which denomination would be in the majority in years to come. There was consequently no objection to it. After the negotiations had proceeded at Ottawa for a few days, the government prepared a draft of a bill framing a constitution for the new province, and sent a copy to each of the delegates for their comments. The nineteenth clause of this draft made provision for separate schools upon the lines of the British North America Act. This was quite satisfactory to the delegates, and the Rev. Father Ritchot wrote as his comment upon the clause (and sent it to the government) these words :—

"This clause being the same as the British North America Act confers, as I interpret it, as a fundamental principle, the privilege of separate schools to the fullest extent, and in that is in conformity with article 7 of our instructions."

The bill which was introduced into the House by Sir John A. Macdonald on the 2nd May, 1870, contained the same provisions as to education as are now found in the Statute. The only objection made to these provisions in the House (see Hansard of 1870, p. 1546) was that it appeared to give the minority more security than was accorded to the other provinces by the British North America Act. For that reason an amendment was proposed, having for its object to strike out the clauses ; and thus to leave as applicable the provisions of the British North America Act only. This amendment was defeated by a vote of 81 to 34, and the greater safeguard provided by the bill was thus given, as it was thought, to the future minority.

The bill having been passed, and become the Manitoba Act, it was taken back to Red River by one of the delegates. After it had been read and explained to the Legislative Assembly the following resolution was, amid much cheering, unanimously passed :—

"That the Legislative Assembly of this country do now, in the name of the people, accept the Manitoba Act, and decide on entering the Dominion of Canada on the terms proposed in the Confederation Act."

This compact thus entered into was made under the express direction and authority of the Imperial authorities. The Canadian Government had applied for the assistance of the British troops to put down the outbreak, but were met with the repeated injunc-

tion to come to terms. On the 5th March Earl Granville telegraphed to the Governor General:—

"Her Majesty's Government will give proposed military assistance provided reasonable terms are granted to the Red River settlers."

On the 22nd of March Earl Granville directed that: "Troops should not be employed in forcing the sovereignty of Canada on the population of Red River, should they refuse to admit it."

On the 23rd of April Earl Granville again telegraphed:

"Canadian Government to accept decision of Her Majesty's Government on all portions of the settlers' bill of rights."

On the 3rd of May the Governor General was able to telegraph: "Negotiations with delegates closed satisfactorily."

And to this Earl Granville replied:—

"I take this opportunity of expressing the satisfaction with which I have learned from your telegram of the 3rd inst that the Canadian Government and the delegates have come to an understanding as to the terms on which the settlement on the Red River should be admitted into the Union."

Finally the Imperial Parliament by statute ratified and confirmed the compact so entered into and embodied in the Manitoba Act.

While the Imperial authorities were thus determined to see for themselves that reasonable terms were granted to the settlers, the Canadian Government and the Governor General were profuse in their promises of liberal treatment. By their instructions the Canadian commissioners who were sent to the Red River were directed to say:

"That no administration could confront the enlightened public sentiment of this country which attempted to act in the North-west upon principles more restricted and less liberal than those which are fairly established here.

"The people may rely upon it that respect and protection will be extended to the different religious denominations. In declaring the desire and determination of Her Majesty's Cabinet you may safely use the terms of the ancient formula 'Right shall be done in all cases.'"

About the same time the Governor General wrote to the Governor of the Hudson's Bay Company:—

"And the inhabitants of Rupert's Land, of all classes and persuasions, may rest assured that Her Majesty's Government has no intention of interfering with, or setting aside or allowing others to interfere with, the religions, the rights, or the franchises hitherto enjoyed, or to which they may hereafter prove themselves equal."

The Canadian Secretary of State, too, wrote to Mr. McDougall:—"You will be in a position to assure the residents of the North-west Territories:—

"1. That all their civil and religious liberties will be sacredly respected:—

"7. That the country will be governed as in the past by British law, and according to the spirit of British justice."

In order that these assurances might have all the weight of the name of Her Majesty the Queen, the Governor General issued a proclamation (6th December, 1869) in which is the following:—

"By Her Majesty's authority I therefore assure you that on the union with Canada all your civil and religious rights and privileges will be respected, your properties secured to you; and that your country will be governed as in the past under British laws, and in the spirit of British justice."

I have shown that in the belief of one of the negotiators (on the part of the settlers) of the Manitoba Act separate schools were provided for. I now desire to add proof that the chief negotiator on the part of the Dominion was of the same opinion, and thus that all parties so understood. From Mr. Pope's very interesting "Life of Sir John A. Macdonald" I extract the following:—

"In 1870 he secured, or thought he had secured, like privileges to the Roman Catholics of Manitoba. We are not left in doubt as to his view of what was intended by the operation of the Manitoba Act. In the very beginning of the present agitation

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in that province, he thus addressed a member of the local legislature, who had applied to him for counsel :—

“ You ask me for advice as to the course you should take upon the vexed question of separate schools in your province. There is, it seems to me, but one course open to you. By the Manitoba Act, the provisions of the British North America Act (sec. 93) respecting laws passed for the protection of minorities in educational matters are made applicable to Manitoba, and cannot be changed ; for by the Imperial Act confirming the establishment of the new provinces, 34 and 35 Vict., c. 33, sec. 6, it is provided that it shall not be competent for the Parliament of Canada to alter the provisions of the Manitoba Act in so far as it relates to the province of Manitoba. Obviously therefore the separate school system in Manitoba, is beyond the reach of the Legislature or of the Dominion Parliament.”

“ It is true that the highest legal tribunal in the empire has put a different interpretation on the Manitoba Act. But with the merits of this question we are in no wise concerned here, my object is merely to show what were the views of him who had by far the greatest share in the framing of this piece of legislation, as to its scope and effects.”

All the facts to which I have referred are undisputed, with the exception of the statement that the bill of rights contained a demand for separate schools. To my mind it is unimportant whether the suggestion of protection for the minority came from Red River or Ottawa ; for whichever be the case there is no room to doubt that the education clauses were agreed to by the negotiators, and formed part of the arrangement for the union with Canada, which was finally adopted both by the Dominion Parliament and by the Red River Legislative Assembly.

But for those who deem the point important, I am in a position to prove the fact that the separate schools provision emanated from the settlers. I produce now an affidavit made by one of the delegates—the Rev. Father Ritchot—which, not only because of the oath of the venerable priest, but because of the circumstances to which he refers, leaves no room for further doubt.

(Affidavit read. Exhibit A.)

It will be observed from this affidavit that the original bill of rights was filed in court upon the trial of Lepine. It has in some way been lost, but I am in position to prove a copy of it. In accordance with the usual practice in capital cases, the prothonotary of the court, immediately after the trial, sent to the Department of Justice a copy of all the proceedings, and among these a copy of the bill of rights. I now produce from the Department of Justice a certified copy of this document. (Copy produced. Exhibit B.)

The relation of these facts ought to be sufficient to prove that there was a solemn agreement entered into by the Dominion of Canada with the Red River settlers that the future minority should be entitled to separate schools. But for those who retain any doubt upon the question I quote the language of the recent judgment of the Imperial Privy Council :

“ The terms upon which Manitoba was to become a province of the Dominion were matters of negotiation between representatives of the inhabitants of Manitoba and the Dominion Government. . . . Those who were stipulating for the provisions of section 22 as—

Mr. McCARTHY.—That is not in the judgment.

Mr. EWART.—I think you will find it there.

Hon. Mr. OULMET.—If what you are quoting is to be found in the case as edited for the Canadian Government by the appellant's solicitors in London, will you please give us the page ?

Mr. EWART.—What I am quoting will be found at the top of page 272.

“ —a condition of the union, and those who gave their legislative assent to the Act by which it was brought about, had in view the perils then apprehended. . . . It was notorious that there were acute differences of opinion between the Catholics and Protestants in the education question prior to 1870. This is recognized and emphasized in almost every line of those enactments. There is no doubt either what the points of difference were, and it is in the light of these that the 22nd section of the Manitoba Act of 1870 which was in truth a parliamentary compact, must be read.”

It may be argued that in their first judgment the Judicial Committee held that the Manitoba Act did not guarantee separate schools. I am aware of the language used, but its effect (as explained in the second judgment) is merely that the words which occur in the statute were not sufficient to accomplish the purpose intended—that is, that the drafting of the statute was defective. A perusal of the second judgment makes it clear that in their Lordships' opinion it was intended to guarantee separate schools, and that that guarantee was a matter of agreement and "compact" between the Dominion of Canada and the people of the Red River.

This then is my first argument: The people of Canada made a solemn agreement that in Manitoba the schools should be separate. If the minority there now were Protestant, and Catholics desired to ignore this agreement, we would hear much of the supposed Catholic principles of "No faith with heretics," "The end justifies the means," &c., but it is the Catholics that are in the minority, and what excuses do Protestants allege for breach of faith and violation of solemn pledges? The excuse of the vast majority, so far, may well be that they were not aware of the facts. I have placed these facts in the very forefront of my argument to-day, with the hope that they may be widely circulated by the press, and thus that no Protestant shall any longer be unaware of what is being done in his name in the province of Manitoba.

One of the guarantees afforded by the Manitoba Act for the preservation of the rights of the minority was the Provincial Senate. Six years' experience proved to Manitoba that, apart from its functions as a guarantee, the Senate was little more than an item of expense; and the Protestants then in the majority, and feeling confident of their own rectitude, proposed to abolish it. The Catholics naturally hesitated, but their apprehensions were removed by profuse promises. The premier (Mr. Davis) in the debate said:—

"It may be said that the Council is a safeguard to the minority. He could assure the minority that their rights would never be trampled upon in this province. There would always be sufficient English-speaking members in this House, who would insist on giving their French fellow subjects their rights, to protect them."

Mr. Luxton (then and still a very influential journalist) said:—

Hon. Mr. FOSTER.—Was Mr. Luxton a member of the legislature?

Mr. EWART.—Yes, and this was said in the course of debate:

"There were some questions of sentiment which lay close to the hearts of the French people; and he could assure them that the English-speaking members would not ruthlessly deal with these, if the French representatives were sufficiently patriotic to support the measure before the House. They would recognize their generosity and not forget it."

Mr. Frank Cornish (then a prominent lawyer) said he "believed the old settlers and the French would make common cause if their rights were infringed upon; and he could assure them that when the Canadian (that is the English speaking) party became the great majority it would not be found oppressive." In accepting these promises on the part of the French and Roman Catholics, Mr. Royal said:—

Hon. Mr. HAGGART.—Are you using that merely as a matter of history, or as bearing on the right that was acquired then?

Mr. EWART.—I am showing that these promises were made to the Roman Catholics at a very important juncture in the history of the province, and I am appealing to the Protestants who made these promises to see that they are carried out. Mr. Royal said: "But there was something else for himself, which had not been guaranteed by any act; he found it yesterday in the remarks of the Hon. Messrs. Davis and Norquay, in the applause given by Mr. Brown to the sentiments of Mr. Luxton, and in the expressions of Mr. Cornish."

And Mr. McKay added:—

"He was very much pleased to hear the generous and just remarks of the Hon. Premier, the Hon. Prov. Secretary, and also that of the hon. member for Rockwood, which gave the minority in the House that confidence which the members of this House, and by their vote on this bill would express, the security they felt in the hands of that majority."

This is my second argument. My first was based upon an agreement entered into by the Dominion of Canada with the settlers at Red River. I now present the



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assurances of the Protestants of Manitoba to the Roman Catholics of Manitoba,—assurances that their “rights would never be trampled upon in this province;” that the “Protestants would recognize their generosity and not forget it;” that “the great majority would not be found oppressive,” etc. Again I say let the Protestants of Canada know what has been done in their name.

My third argument is based upon further promises, and this time the promises made by the Liberal party in Manitoba, which enabled them to defeat the Harrison Government, in St. François Xavier, and themselves to acquire power. The facts may best be stated by reading the following affidavits:—

Mr. Fisher, the President of the Liberal Association; Mr. A. F. Martin, the Liberal Organizer in St. François Xavier, Mr. Francis, the Liberal candidate in St. François Xavier; Mr. Burke, the Conservative candidate in St. François Xavier, and also those of Messrs. Joseph Hogue, William Hogue, J. P. McDougall, Francis Walsh, G. Todd and N. Todd, electors in St. François Xavier.

Mr. McCARTHY.—I suppose there is no object in making any objection; I suppose that everything is regular.

Sir MACKENZIE BOWELL.—What would the nature of the objection be?

Mr. McCARTHY.—I do not suppose that a promise given by an organizer or by a gentleman running as candidate in a constituency can be held as binding upon the province?

Hon. Mr. ANGERS.—These may be witnesses to some promise made by persons in authority.

Mr. McCARTHY.—I suppose that everything is regular.

Hon. Mr. ANGERS.—We can hardly know what these affidavits are, until they are read.

(The affidavits were read by Hon. Senator Bernier, Exhibits C, D, E, F, G.)

Mr. EWART.—The affidavits of the other five electors are almost identical with the last read, and I suppose they may be taken as read.

(Affidavits put in, Exhibits H, I, J, K, L.)

My fourth argument is nearly allied to the third. It is based upon promises made by the Greenway Government (after its accession to office,) to His Grace the Archbishop of St. Boniface and to various other persons, in order to enable him to obtain for his cabinet a representative of the Roman Catholics and to carry the general elections of 1888. In support of this I read the affidavits of the Reverend Vicar-General Allard, and Mr. W. F. Alloway. (Affidavits read by Hon. Senator Bernier—Exhibits M. and N.)

The promises proved by these affidavits, given at these four periods of the history of Manitoba have all been violated by the passage of the School Act of 1890. I have endeavoured to think of language which would fittingly characterise the utter degradation and complete abnegation of all truth and honour exhibited by the recital of the conduct which it has been my painful duty to lay before this Honourable Council; but I acknowledge myself utterly unable to find adequate expression. I do not suppose that it would be possible in the political record in any civilized country to find anything so utterly and indefensibly base, cowardly and heartless. My first four arguments, then, are founded upon agreements and promises:—First, the compact made by the Dominion of Canada; second, the promises made by the Protestants of Manitoba; third, the promises made by the Liberal party in Manitoba; and fourth, the promises made by the Greenway Government. All these agreements and promises have been violated—those of the Greenway Government; those of the branch of the Liberal party in Manitoba (and I say it with bowed head, for to that party I once belonged); those of the Protestants of Manitoba (and I feel the shame of it, for in that faith was I born and nurtured); and those, too, of the people of Canada. For this violation, however, the Liberal party of Canada, the Protestants of Canada, and the people of Canada have not yet made themselves responsible; and to them I lift my eyes with confidence, that when the facts are known, then that which has been done will by them be repudiated, and all injustice remedied. With a full sense of my responsibility for the statement, I add that in my humble judgment Canada would not be a fit place for an honest man to live in, were its inhabitants to remain unaroused to indignant action by the relation of such shamefully perfidious action.

I pass on now to argue, as a fifth point, that even had we no agreements or promises to urge, yet that relief should be given to us. But upon this subject I will not be expected to present all the arguments which may be advanced in favour of separate schools. I shall not do more than indicate the more salient of them.

First and ever first upon this subject must stand the principle of individual liberty. There are three kinds of schools:—The purely secular; the secular, plus a little religious teaching; and the secular plus some more religious teaching. Many of the supporters of the first urge that all religion must be excluded from all the schools; but I need not stop to argue with them, because Manitobans will have none of such a system. Many of the supporters of secular schools plus a little religion want to have all the schools conducted according to their particular views. They argue to their own satisfaction that “Godless schools” are an abomination; that a certain particular quantity of religion is the proper allowance for all schools; and that any more than that is an interference with the principle of separation of church and state—something to be violently declaimed against. These gentlemen never stop to tell us why it is that if their modicum of religion may be admitted without breach of everlasting principle, some other person’s modicum must be excluded because of the same principle. If we determine that the schools are to be in some sense religious, then the question arises: How much is there to be? Now that question may be answered by Mr. Greenway and Mr. Martin and others, skilled in theology, by adopting some one or other of the thousand conflicting opinions which are held upon the subject. For example, they might adopt the opinion of one of the most influential of the Winnipeg Protestant theologians, and say that the “Being, character and moral government of God,” but not the higher graces due to the operation of the Holy Ghost, should be taught—that the schools ought not to be Godless (it seems), but may very well be Ghostless—and these politicians might probably think it advisable to prepare a model lecture or two upon the subjects prescribed. But the better way, as it appears to me, to answer a question as to the amount of religion to be admitted in the schools, is to say that the people shall be permitted, so far as possible, to answer it for themselves—better to allow freedom of opinion upon a matter of that kind than resort to the old-fashioned method of endeavouring to make everyone think and act alike.

But I shall be told that such a course is not practicable—that Government must regulate the supply of religion in the schools, or we shall have no public schools at all. To such persons I say: Look around you. Broadly speaking, there are the three great divisions or opinions already referred to, and no difficulty has been felt in arranging so as to let all three have their own way. I do not say that there are not individuals who are not within any of three classes; but I do say that no one of the three great classes is to be deprived of liberty because it is found impossible to give a like complete liberty to every individual. Extend liberty as widely as possible. That you cannot attain the ideal is no reason for not doing the best you can. Because you cannot convict all criminals, furnishes no argument for the abolition of the administration of justice. How then are we to give liberty of action in this matter to the three great classes in the community? The answer is, that the system in force in Manitoba prior to 1890 secured that end. It gave to Protestants complete control of their schools, and that body (including as it does the first two classes of persons) could arrange for their religious modicums, and the absence from attendance of those who desired purely secular education, as they pleased. The third class of persons, forming the Roman Catholic body, were entrusted with the control of their schools, and they introduced into them the religious instructions which they thought proper. All classes, therefore, had their way, and were quite content till informed in 1890 that they were not.

Now what are the objections raised to that system? The most usual one is that thereby public money is used to propagate denominational teaching. But this is a very easily answered mistake. In England public money is distributed among the denominational schools, but does the State pay the money for propagation of religious teaching? Not at all. Upon the contrary it is specially provided (33 and 34 V., c. 65, s. 97):—  
“Such grants shall not be made in respect of any instruction of religious subjects”; and no inspection takes place upon religious subjects.

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The State pays for the secular work accomplished and does not prohibit people from teaching, or being taught religion:—that is all; nor does it attempt to cut off a religious portion and prescribe that for every body. When the city of Toronto makes large grants to charitable institutions, many of them under denominational control, it pays nothing for propagating religious doctrines, but only for the good work done to the bodies of the needy. Surely, if the Government paid for certain road work done by Roman Catholics in industrial schools it could not be charged with propagating Roman Catholic doctrine; and if it pays the same institution for educating in secular subjects some of its youthful citizens, how can a similar charge be made? It may be as well said that I paid money for extending the Roman Catholic religion did I send my washing to a Roman Catholic house of industry. I pay for the washing, not for the prayers which may be said over it, about the advantage of which I might have my own opinion.

The truth is that the general principle invoked by our opponents is, as so often happens, one made for the occasion. They are opposed to anything savouring of the Roman Catholic religion appearing in the schools, but are in favour of some portion of their own religion being there. They, therefore, have to manufacture a principle which fits their wishes, and then from such principle they triumphantly argue. They cannot assert that Church and State being separate, there ought to be no religion in the schools, for that would exclude their own, so the formula they hit upon is that there ought to be no kind of religion there which could be recognized as belonging particularly to anybody. They say to the Catholics: We both believe this much; let therefore, this much be taught in the schools. The Catholics answer: Those items which you pick out, standing apart from other things, are Protestant and not Catholic. Protestants reply: You can teach these other things on Sunday in your churches elsewhere. In fact to use a simile, Protestants say to Catholics we must eat together, and we both like porridge. The Catholics answer: Yes, but not without salt in it; and Protestants with unanswerable logic, and without a shadow of a smile, reply—Very well, you can take the salt on Sundays, at home or elsewhere, as it pleases you.

A second objection to separate schools is, that when there is Roman Catholic religion in the schools, the children do not progress properly in their studies. Some people think that this is because God has so ordered, others think that it is because of the encroachment upon the time of the children. To these latter I say, did you ever visit a Roman Catholic school? If so, how much time did you find devoted to catechism? But such persons never did visit a Catholic school, and they tell me it is not necessary to do so—that the results tell the tale. Let such persons be informed that the facts are not so clear as they may think them; that in Winnipeg and many other places, Protestant children are sent to Catholic schools because the education is better there than in other schools; and that if the results in some schools are otherwise it ought to be remembered that the Roman Catholic church in Ontario and Manitoba is not the church of the elite, but of the poor, and that results in every department of life are largely governed by the material employed.

This leads us to discuss the facts with reference to the character of the schools now in Manitoba. I do not at all concede that if the schools can be shown to be non-sectarian our right to relief is any the less strong. That Catholics are prevented from teaching their own religion is the complaint, and it is no answer to that, that others are likewise so prevented. Many minds may, however, be influenced by the settlement of the fact and for them I shall now answer the question, Are the schools unsectarian or Protestant? The answer is not difficult: and it forms my sixth argument.

Prior to 1890 there were two sets of schools in Manitoba—Protestant and Roman Catholic. The Protestant schools were fashioned and conducted by Protestants, without either Catholic or State interference; and the Catholic schools were fashioned and conducted by Catholics without either Protestant or State interference. We are in a position therefore to ascertain exactly what Protestant schools are—what kind of schools, and how much religion Protestants would have if left to themselves to regulate it. This system commenced in 1871 and in that same year the Protestant Board “determined to exclude all distinctive religious teachings from its schools, but enjoined

the reading of the Holy Scriptures and the prayers as published in the by-laws and regulations, at the opening and closing of the schools." (*See Report 1871, p. 8.*)

The regulations of the Protestant board which were in force immediately prior to the Act of 1890 provided as follows:—

"The Bible shall be used as a text book in the Protestant schools of Manitoba. A supply for use in each school may be obtained by the trustees, otherwise each pupil from standard three upwards shall be required to provide himself with a Bible in addition to his other text books.

"The selections for reading shall always include one or more of the lessons in the authorized list given herewith; but any other selection from Scripture may, in the discretion of the teacher, be read in connection with them.

"The Scripture lesson in each school shall follow the opening prayer, and shall occupy not more than fifteen minutes daily. Until notes and questions are provided under the authority of the Board, the readings shall not be accompanied by comment or explanation."

No notes and questions ever were provided, so that the Bible reading was without "comment or explanation." A form of prayer was also prescribed. The regulations adopted immediately after the Act of 1890 provided:—

"(a.) The reading without note or comment of the following selections from the authorized English version of the Bible or the Douay version of the Bible.

"(b.) The use of the following forms of prayer."

The Bible selections after 1890 are not so numerous as those prior to that year, but so far as they go they are the passages selected by the Protestant board, and the forms of prayer are identical with those previously used by Protestants. It will thus be seen that the religious exercises prescribed by Protestants for purely Protestant schools are substantially identical with those for the non-sectarian schools. Catholic services are of course wholly different. The non-sectarian exercises were, therefore, constructed to meet Protestant and not Catholic ideas, and so may well be said to be Protestant. But they are sectarian not only in Roman Catholic view, but in the estimation of Jews, Unitarians and others. It will not be possible for any Jew or Unitarian to join in the prayer prescribed.

I now turn to the religious instruction prior and subsequent to 1890. Prior to 1890 the regulations were as follows:—

"It shall be the duty of the teacher of each school to instruct his pupils from standard three and upwards in the Ten Commandments and the Apostles' Creed, so that they may be able to repeat them from memory; and to devote one-half hour weekly to this exercise; and to the giving of such instruction in manners and morals as he may find practicable."

Since 1890 the following regulations prevail:—

"To establish the habit of right doing, instruction in moral principles must be accompanied by training in moral practices. The teacher's influence and example, current incidents, stories, memory gems, sentiments in the school lessons, examination of motives that prompt to action, didactic talks, teaching the Ten Commandments, &c., are means to be employed."

The only difference then between Protestant religious teaching prior to the Act, and non-sectarian teaching after the Act, is that the latter is a little more specific than the former. I cannot imagine that any wider instructions could be given for the conduct of a Sunday school than are contained in this "non-sectarian" programme. As one reads them one feels that the atmosphere becomes distinctly sabbatic. One sees the "memory gems" upon the wall—"There is no other mediator, &c."; the teacher becomes the superintendent; he tells of "the motives that prompt to action," observing that superstitions are not sufficient foundation for a system of ethics, and recounting, as Mr. Heath recently did in British Columbia, the contempt which he personally displayed towards the Holy Wafer by putting it in his pocket instead of in his mouth; he calls upon his class to recite the fifth commandment, and when some of the children commence with the Protestant fifth and others with the Catholic fifth, he explains which has the right of the matter; and he finishes with a "didactic talk," which may very well be a Presbyterian sermon. It may be said that the "didactic talks," the

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"memory gems," &c., must be all of a non-sectarian character. But this can only be properly accomplished when you have a supply of non-sectarian teachers. It would be impossible for a Presbyterian or a Roman Catholic conscientiously to conduct a Sunday school without disclosing his distinctive characteristics. But if a teacher can successfully conceal his real belief under general language when talking in didactic fashion, what is the poor non-sectarian teacher to do when he is set to teach the Ten Commandments? What reason is he to give why the Protestants divide the Catholics' first commandment into two, making up for it by adding their ninth and tenth together. When he is teaching the Protestants' second commandment, is he to state that it is a special commandment aimed at Roman Catholics' images and relics? or is he to explain "Thou shalt not make unto them any graven image" as the Catholics explain that language? And when he comes to the Protestants' fourth commandment enjoining the keeping of Sunday, shall he inculcate Protestant or Catholic belief as to the lawfulness of recreations, and works of liberal and artistic character? Let Protestants tell me that they are willing to have their children taught the Ten Commandments by Roman Catholics, and I shall then, but not till then, acknowledge, that the present schools are unsectarian.

I have with me the Presbyterian and the Roman Catholic methods of teaching the decalogue. According to the former, one of the sins forbidden by the first commandment is "Praying....to saints, making men lords of our faith and conscience," &c.; one of the sins forbidden by the second is "the making of any representation of God, of all or of any of the three persons, either inwardly in our mind or outwardly in any kind, of image, or likeness of any creature whatsoever; all worshipping of it, or God in it, or by it," &c.; one of the sins forbidden by the third is "the maintaining of false doctrines," &c.; one of the sins prohibited by the fourth is "all profaning the day by....recreations"; and so on. Does any one tell me that this is not sectarian, or that it is possible for a Presbyterian believing that these are sins, and that they are prohibited by the Ten Commandments, to teach the decalogue and say nothing about them? I need not stay to contrast the lessons drawn by the Roman Catholics from the same Commandments. Suffice it to say that they are such as are anathematized by all Protestants.

I have now shown that the religious exercises and the religious instruction are essentially sectarian. The same vice (or virtue) invades even the programme of studies prescribed for "non-sectarian" schools. I shall in this connection mention but one of the objections which Roman Catholics urge against this programme; but it is directed to a subject so palpably sectarian, and of such clearly controversial, if not explosive, character that Protestants will at once recognize the validity of the objection. Among the subjects prescribed for Grade VII., there is the following:—

"History—(a) English—Religious movements—(Henry VIII. and Mary)."

Now I should think it extremely difficult for anyone to teach at all adequately the history of religious movements, without leaving himself open to criticism by one of the parties interested. But of all periods, I know of none more difficult to treat in this fashion than the two selected for our non-sectarian schools. To Protestants, Henry VIII. was the one who released the English Church from the "thralldom of Rome," and threw off for ever the yoke of the "foreign potentate." To Catholics, he was the great schismatic, the disrupter of God's Church, and the confiscator and plunderer of her heritage. For Protestants, the religious movement under "Bloody Mary" were principally movements from homes and hiding places to scaffold and faggot fires. To Catholics, Mary's reign was a period of rehabilitation, and of return from the sin of schism to the bosom of the true church. It is not possible for Protestant or Catholic, if he be earnest, to teach these subjects without offending the other, and the poor non-sectarian, struggling to please both, would most certainly be condemned by both.

I cannot leave this part of my argument without quoting from an address delivered before the Winnipeg Liberal Club on the 20th February, 1894, by the author of the School Act of 1890—Mr. Joseph Martin—in which he himself argues against the religion in the schools as being unfair to the Catholics. He said that:—

"He was himself not satisfied with the School Act and had never been so. He had made a strong effort to have the public schools, controlled by the Government, really made national schools with religion obliterated; and he was now more convinced than ever that was the only school which could be justified as constitutional. They said that the

State had no right to interfere with the different denominations, but had the right to interfere in the matter of religion; but he contended that they would not do the one without the other. It had been urged by satisfied supporters of the Act that none could complain of the devotional element introduced, as it was of the broadest nature. But they found that the Roman Catholics had the very greatest objections to this provision of the Act, and he was himself dissatisfied with it, and was glad many Protestants shared his objections. . . . The Roman Catholics had honestly stated that in their belief the two forms of education should go together. The Protestants admitted on the other hand that it was impossible to have religious training in the schools, and only asked that it be recognized—insisting, however, on imposing their views on others in that respect; rather than that small amount of religious training should be done away with in the schools, the Protestants said they would prefer the old state of affairs. He would leave it to his audience to determine which was the more honest stand of the two."

If, in the opinion of the author of the Acts (although for reasons other than those, which would be urged by Roman Catholics) their practical working has proved that their continuance is an imposition of Protestant opinions upon Roman Catholics, in a matter almost indifferent to Protestants, but affecting in a vital point the faith of the Catholics, to such an extent that the very honesty of the Protestants may thereby be impeachable, I say that if that is the opinion of the author of the Acts, I have to go no further for arguments, as to their unfairness.

One other suggestion as to the character of the public schools in Manitoba. Speaking very generally the Roman Catholic religion includes the Protestant religion, and the distinctions are found in its additional features. Protestants desire, so they say, to have taught in the schools that which is held in common. Catholics say that if you separate what is common from the rest that is Protestantism. Suppose a vegetarian asks me to dine with him, and I stipulate that the dinner is not to be of a vegetarian character, ought I to feel aggrieved if I got nothing but vegetables? My host would say that the dinner was not vegetarian, that I believed in the vegetables as much as he did, and that this was, therefore, a common and universally approved dinner—one to which all alike could come. Nevertheless, I think that I would be right in calling it a vegetarian dinner. In the same way I may say that the schools are distinctively Protestant—by the very omission of an ingredient (the very salt of the matter as is thought) the schools are rendered obnoxious to Catholics, and represent the Protestant and not the Catholic teaching of religion.

And why should not Catholics have salt in their porridge if they want it? They do not ask anyone else to have it in theirs. They are willing to accord to the non-salt eaters full liberty of action. Why should not the same liberty be returned to them? For what is there involved in the separate school question? Why this, and nothing more, whether Catholics are to be permitted to have in schools, attended by nobody but Catholics, a somewhat different kind of religion from that taught in the other schools, and, probably, a little more of it—they want salt in their porridge. They do not ask that their church should in any way control the schools. They are perfectly willing to work up to any state-prescribed standard of secular instruction, to be subjected to inspection, and to use school books not at variance with their religious doctrines. They do not seek to displace the Protestant schools or to change in any way the teaching in them. Protestants may have it without salt if they please. All that is desired is the same liberty as the Protestants, by their numbers, compelled the Greenway government in 1890 to give to them the same liberty which is willingly given by Roman Catholics to Protestants in the province of Quebec.

I feel certain that the settled belief of the people of Canada is that such liberty ought to be accorded to Roman Catholics everywhere throughout the Dominion. This forms my seventh argument. In Ontario an experience of very many years has made that matter so clear that now very few are left who complain, and these are usually those whose antipathy to Roman Catholics would carry them to the exclusion of their fellow-countrymen from public employment because of their faith. In Quebec there is no complaint. There the majority is Roman Catholic, and Dr. Robbins, Principal of the McGill Normal School, has testified: "We are of the minority of this province, but we know that we are not regarded as a factious or insignificant minority. Our suscep-

tibilities are considered, our educational rights are maintained by the majority." Something of a lesson there, I think, for some Protestants in the virtues of tolerance and good fellowship. In New Brunswick and Nova Scotia, although there is no law permitting it, yet, by common consent, the Catholics are permitted exclusively to occupy certain of the public schools and there to teach their children such parts of their doctrine as they think fitted for the schools. I am informed that a similar custom prevails in Prince Edward Island.

This tolerance and freedom is also spreading in the United States, notwithstanding the fact that, as the law stands, the whole community must wink in common at it, or it would be stopped. At Poughkeepsie, at Rondout, at Savannah, New Haven, Lima and many other places, the people are more liberal than their laws, and Catholics enjoy no small measure of the liberty they so eagerly desire.

Returning to Canada, I can point to the unvarying support which the separate school principle has always received in the Dominion Parliament. In 1872, in the New Brunswick school case, by a majority of 117 to 52 the House of Commons regretted the passage of the Statute which was complained of, and by a majority of 114 to 73, passed an address asking Her Majesty "to use her influence with the Legislature of New Brunswick to secure such a modification of the said Act as shall remove such ground of discontent." The figures which I have given do not represent properly the overwhelming number of the majority that was in favour of the Catholics in New Brunswick, for upon both occasions, there were many in the minority who voted as they did, because the resolutions were not sufficiently strong. If the resolutions had been stronger, they would have had much additional support.

Afterwards, in 1878, the Dominion Parliament provided for separate schools in the North-west Territories without hardly a dissentient voice. When in 1894, Mr. McCarthy wished to amend the statute and leave the subject in the hands of the people of the North-west Territories, he was defeated by 114 to 21; and Major Hughes, who wished to prohibit directly all sectarian teaching in the North-west schools, by 131 to 2.

It has been urged that the matters in question here should be left to the disposition of the province of Manitoba. This argument emanates, of course, from the majority—leave it to the province, they say—that is leave it to us. Now, why was an appeal provided for by the constitution at a time when parties were about equally divided? Was it for the purpose of being acted upon, or was it inserted merely as something ornamental? Was it to be used if the Protestants were in the minority, but not if the Catholics were the injured ones? What was it put there for? I say that it was placed there as one out of many constitutional guarantees which Protestants and Catholics alike enjoy under Canadian constitution—a guarantee which it was hoped would remain unused, like a life-preserver, but which was to be resorted to in case of need.

Let me quote the language of the Privy Council upon this point:—"Bearing in mind the circumstances which existed in 1870, it does not appear to their Lordships an extravagant notion that in creating a legislature for the province with limited power, it should have been thought expedient, in case either Catholics or Protestants became preponderant, and rights which had come into existence under different circumstances were interfered with, to give the Dominion Parliament power to legislate upon matters of education as far as was necessary to protect the Protestant or Catholic minority, as the case may be."

I wonder what our opponents would say about Dominion interference with provincial rights, were Quebec to interfere with the Protestant privileges there. It would not be provincial, but "Protestant rights" then that we would hear of—"solemnly guarded and guaranteed by the constitution;" and so I urge that it is Catholic rights and not provincial rights that are being interfered with; that it is a provincial wrong, and not a provincial right that we have to deal with. The appeal is given so, that provincial wrongs may be made into rights.

Such considerations are, however, not properly up for discussion before this Council, for, as I have formerly contended and now repeat (as my eighth argument, and with all proper deference and respect), not only has His Excellency in Council a power of appeal, but it is his bounden duty to hear the appeal, and to adjudicate thereon, as its merits may require.

The Council adjourned until 2.30 p.m.

## AFTER RECESS.

The Council resumed at 2.30 p.m.

Mr. EWART.—I argue that the constitution has given to the Catholic minority of the Queen's subjects in Manitoba, as a right, an appeal from Acts of the Legislative Assembly; that His Excellency in Council cannot decline to hear such an appeal, and cannot refuse, whether out of regard for the Legislature or for any other reason, to deliver a judgment upon the merits of the case, when brought before him. It is a well-known rule for the construction of statutes that where functions of a public nature are bestowed upon individuals, such persons have no right to refuse to exercise their powers. The rule includes cases in which jurisdiction of a judicial character is given. Even when the language of the statute is permissive—the judge may do so and so, “may” is always held to mean that if a proper case is made out he *shall* do so and so. Allow me to quote a passage from Maxwell on Statutes (pages 295-6):

“It is a legal or rather a constitutional principle that powers given to public functionaries, or others for public purposes, or the public benefit, were always to be exercised when the occasion arises.” And again: “But as regards the imperative character of the duty, it was laid down by the King's Bench (*R. v. Hastings*, 1 D. & R., 48), that words of permission in an Act of Parliament, when tending to promote the general benefit, are always held to be compulsory; and as regards courts and judicial functionaries who act only when appealed to, the same rule was in substance, re-stated by the Common Pleas in laying down that whenever a statute confers an authority to do a judicial act (the word ‘judicial’ being used evidently in its widest sense) in a certain case, *it is imperative* on those so authorized to exercise the authority when a case arises, and its exercise is duly applied for by a party interested, and having a right to make the application; and that the exercise depends, not on the discretion of the courts or judges, but upon proof of the particular case out of which the power arises.”

Our Supreme Court Act provides that “an appeal shall lie to the Supreme Court from all final judgments” of provincial courts. The Manitoba Act in similar terms, provides that “an appeal shall lie to the Governor General in Council from any act or decision of the Legislature of the province.” What would we say of the Supreme Court did it refuse to hear an appeal, or to deal with it as justice required, merely because the case involved some political, or otherwise troublesome, question? With all proper respect and for identical reasons, I say that His Excellency in Council cannot decline to exercise the important powers by the Manitoba Act conferred upon him for the protection of the Roman Catholic minority in that province, and I humbly claim, as a right, that the petitions shall be disposed of upon their merits and without regard to the feelings of the body appealed from. A further consideration which emphasises the duty of the Council in this particular case, is the fact that rights, vested rights, which the Catholics had in Manitoba, prior to the Act of 1890, have been taken away from them. The Legislature of Manitoba voluntarily conferred those rights upon the Catholics, and I urge that Parliament ought, by an order to be made by this Council, be given the jurisdiction to deal with the matter, and, if it thinks proper, to restore to us the rights of which we have been deprived. In other words, I contend that this Council ought not to refuse to allow the matter to be taken before Parliament.

As to the measure of relief asked for by the Roman Catholic minority in Manitoba, I have prepared and now submit (without prejudice to any other claims which we may have) a draft of such a statute as we would propose the Legislative Assembly of Manitoba should be asked to pass. (Exhibit P.)

I may say that it is taken very closely from the old statutes, and it is one under which we would seek to get relief.

Hon. Mr. IVES.—Might I ask if it is an amendment of the law of 1890, or if it replaces the law of 1890?

Mr. EWART.—Neither, accurately. It is drafted upon the lines of the Ontario Statute. It is neither strictly an amendment of the Act of 1890 nor does it replace it. The Act of 1890 is left to its operation, and this will be a further Act. We have given it the title of “The Separate Schools Act,” taking the title from the Ontario Statute.



## Manitoba School Case.

It would then be in Manitoba, as in Ontario, a Public Schools Act and a Separate Schools Act.

Hon. MR. CURRAN.—Do you go beyond the rights and privileges they had before?

MR. EWART.—No. We have been very careful not to go one step beyond, but we have given up some things we had before, as I shall now explain.

Prior to 1890 additional matters were confided to a board of education composed of twelve Protestants and nine Catholics. This board was divided into a Protestant and a Catholic section, each having care of its own schools. The Board, as a whole, had certain jurisdiction, and the respective sections had what remained. The Act of 1890 abolished the Board of Education and provided for a Department of Education, composed of the Executive Council, or a committee thereof. We do not propose to re-establish the old Board. If the Legislature would rather have a Department of Education than a Board of Education, we have nothing to say. But we do ask that those powers which, before 1890, were exercised by the Roman Catholic section of the Board, should again be entrusted to a similar body. The jurisdiction formerly exercised, not by the Catholic section of the Board, but by the whole Board, we are satisfied should for the future, be relegated to the Department of Education; although that will remove from Catholics all share in the settlement of such matters. The reconstituted body of Catholics will, I presume, and as I have provided, have to be appointed by Government, for that was the provision prior to 1890. We ask, too, that we should be relieved from taxation for the support of the present Protestant schools, and of any schools which are non-Catholic; that we should have power to organize our own schools and tax ourselves as formerly; and that we should have our share of all public moneys voted for the maintenance of schools.

So much for the future. With regard to the past some things that have been done ought to be undone. The effect of the Act of 1890 was to transfer the ownership of all Catholic school property to the Protestant schools. We think that this should be given back to us. As part of the property which was confiscated by the Act of 1890, I may mention the sum of \$13,879.47, which the Catholic section of the School Board had at its credit in 1890. The circumstances connected with the confiscation of this amount of money (a large sum for Manitoba Catholics) can best be related by reading the affidavit of the Honourable Senator Bernier (Exhibit O). We think that we cannot be deemed unreasonable if we ask that this money, filched by Act of Parliament, should be restored to us.

The remedy which we seek we are content to obtain in the method pointed out by the judgment of the Privy Council, in which it is said: "It is certainly not essential that the Statutes repealed by the Act of 1890 should be re-enacted, or that the precise provisions of these Statutes should again be made the law. The system of education embodied in the Act of 1890, no doubt commends itself to and adequately supplies the wants of the great majority of the inhabitants of the province. All legitimate ground of complaint would be removed if that system were supplanted by provisions which would remove the grievance upon which the appeal is founded, and were modified so far as might be necessary to give effect to these provisions." By supplement and modification, then we are satisfied to obtain the relief which we ask.

There are various points regarding details upon which we would be very willing to make some compromise or agreement with the Manitoba Government, but we are at present in this difficulty, that we are not in a position to ask that any compromise, however fair, should be enacted by the Dominion Government, without the assent to it of the local legislature. We can ask only for that which we had before, and must be careful not even by concessions to change in any material respect the position which we formerly occupied. If we did, any statute that the Dominion might pass might be *ultra vires*.

I hear it frequently said that the Protestant portion of the province of Manitoba is almost a unit in its opposition to separate schools; that Manitoba will refuse to comply with any law passed by the Dominion Parliament; that Manitoba will defy the law laid down by the Judicial Committee of the Privy Council and refuse to be bound by the terms of her own constitution. But it is only when I come to Ontario that I hear those things; even as one had to go to that province to hear of the frightful wrongs

imposed upon the downtrodden Protestants in Quebec, by the passage of the Jesuit Estates Act. The Manitoba School Act of 1890 is well known to have originated with one man, and to have been imposed by him upon the Government, of which he was the only strong member, much against the will of his chief; and to be maintained now purely for political purposes, and by the local representations of but one political party. The strategic uses to which the question is put, may well be seen when we observe that although it is the Liberals who conjure with it in Manitoba, it is the Conservatives who endeavour to make capital out of it in Ontario. I say that it is in Ontario alone that we hear of an intending rebellion in Manitoba. The local Government no doubt, has asserted that it will resist to the extent of its power, but outside of Ontario, there has been no hint of reconstitutional action, no suggestion that the loyal people of the Prairie Province had any idea of setting themselves against, or above, the law of their own constitution. The Conservatives in Manitoba are almost to a man in favour of liberty to my clients; and so too are many of the Liberals.

In closing my argument, I cannot do better than adopt (with the exception of a single expression) the concluding language of an address delivered by Dr. J. H. Morrison, before the Junior Liberal-Conservative Association of St. John, N.B. :—

He said :—"Anticipating the appearance of this question in the arena of federal politics, Mr. McCarthy and his Protestant Protective Association have launched out upon a campaign of open hostility to the Roman Catholic Church upon general principles. They hope to enlist the great army of loyal Orangemen upon their side, when they have to face this question. I am proud to be a member of the Orange Society. It is a noble institution and I wish its aims, principles and precepts were better understood by the public at large. But no part of an Orangeman's obligation, permits much less requires, him to oppose a Roman Catholic fellow citizen, merely because he is a Roman Catholic, and he is bound by his obligation to resist the encroachments of the Church of Rome only by just and legitimate means. Is it just and legitimate to break solemn pledges, to violate solemn compacts, to insult, despoil and trample under foot a weak minority, simply because that minority is Roman Catholic?"

Should the Legislature of Quebec abolish the Protestant separate schools of that province, what a cry would go up from all the Protestant newspapers all over Canada? The very men who now cry "let the majority rule," would then enter the lists to see that the minority should have protection; and you would find Mr. Dalton McCarthy in the vanguard of those who would be ready to unsheathe their swords for the defence of separate Protestant schools. And if the helpless Protestant minority in Quebec should appeal to the Parliament of Canada for protection, would not the entire country endorse and support the Government which would restore them to their present favoured position? Who would then cry "let the provincial majority rule." Can we afford to withhold from the Catholic minority in Manitoba the same justice which we would readily grant to the Protestants in Quebec? Can we make flesh of the one, and fish of the other, and still maintain our own self-respect? Will it be just for us to ratify the wiping out of the separate schools of Manitoba, simply because we are on general principles opposed to separate schools, without taking into consideration the circumstances which surround the case? We cannot afford to adopt the Jesuitical (I object to that word) doctrine, that the end justifies the means, we cannot afford to do wrong that good may come. We cannot afford to be unjust.

"Nearly 1900 years ago, there was delivered to the world a law, which has been the greatest of all forces, in the revolution of religion, civilization and society. It was the law, "Do unto others as you would that they should do unto you." Actuated by the spirit of that law, President Cleveland decided to restore to her throne the deposed Hawaiian Queen. Should party jealousy, or Republican hatred of monarchical institution, thwart his beneficent purposes the finger of scorn will be turned upon the United States by the nations of the world. Let not the finger of scorn be turned upon Canada, because she shall refuse to be as just and generous as the President of the Great Republic.

"Again I say, that when this question comes before us, as it must come, if the Government of Canada find it their duty to interfere, let our motto be "Let justice be done though the Heavens fall."

## Manitoba School Case.

Sir CHARLES TUPPER.—You have submitted a bill. Is your construction of the British North America Act or of the Manitoba Act—I refer to the clause having to do with this matter in each case—is it your construction that the Governor in Council, if they decide to act, are bound to submit a bill to the Legislature of Manitoba?

Mr. EWART.—I am inclined to think so. I am not perfectly clear about it, but I am so much of that opinion that I would be afraid to adopt any other course.

Sir CHARLES TUPPER.—Then what is your construction of that clause 4 in the first Act, and of clause 3 in the other, where, in one case, they use the expression 'provincial authority'? I desire to call your attention to this point, and to ask whether, in the clause to which I refer, the Legislature contemplated an alternative answer, that is to say, whether the Governor in Council, in the first part of the paragraph, should intimate to the Legislature what is requisite, and in the alternative, whether it would be sufficient for the Governor in Council to make a decision in general terms?

Mr. EWART.—I am inclined to think that it applies to different cases, that the first of these alternatives applies to the case of a law, and the second, to some administrative proceeding taken by some provincial authority.

Sir CHARLES TUPPER.—Other than the Legislature?

Mr. EWART.—I am inclined to think so. I admit the clause is not free from doubt. There are so many different opinions about it that one must admit that it is not free from doubt.

Hon. Mr. ANGERS.—Do I understand that the bill you have presented is suggestive and not an injunction?

Mr. EWART.—Suggestive merely.

Sir CHARLES TUPPER.—As the widest measure of relief, I suppose.

Mr. EWART.—Not as the widest measure of relief, but what we are willing to ask and accept.

Hon. Mr. ANGERS.—One that would satisfy your clients?

Mr. EWART.—Yes.

Hon. Mr. IVES.—In your previous address, you say that you appreciate the fact that the Government have no power except to confer jurisdiction upon the Parliament of Canada. I suppose you still adhere to that view?

Mr. EWART.—Yes.

Hon. Mr. OUMET.—That the Government has no legislative authority.

Mr. EWART.—None whatever.

Hon. Mr. OUMET.—What is suggested in your bill would give you a full remedy of all the grievances you now have to complain of.

Mr. EWART.—Yes, except as to some matters such as this, for instance, a share of the legislative grant during the last four years, we have not got any of that. We have had to maintain our own schools out of our own pockets in the meantime, and we have had to pay taxes for the support of Protestant schools, but we have not had any share of that. There are one or two other matters. I cannot say that by this bill we would be put in anything like the position we would have been in had there been no interference, or as a matter of broad equity, we should be in.

Hon. Mr. HAGGART.—I suppose you intend to produce evidence to show how the Acts of 1890 interfered with rights and privileges that you acquired.

Mr. EWART.—That is established sufficiently by the judgment. That must be taken as conclusive upon that point.

Mr. MCCARTHY.—Mr. President and gentlemen of the Privy Council: Before proceeding, I desire to state that Mr. John O'Donohue, a public school trustee of the city of Winnipeg, has come here on behalf of himself and that portion of the Roman Catholics in the province that he believes to be in sympathy with his views, and I would ask that you hear him before I commence my argument.

Sir MACKENZIE BOWELL.—Mr. O'Donohue may proceed.

Mr. O'DONOHUE (reading a statement).—I am a resident of Winnipeg, a public school trustee for Ward 3, and a member of the Catholic Church and a regular communicant. I desire to appear before you to present my views on the public school question on behalf of myself and a large number of Catholics of the province of Manitoba, whom I represent.

When I first arrived in Manitoba in 1882, my business for the first five or six years brought me into contact with the people all over the province, more particularly the French settlements. From the first I took considerable interest in the schools, and it was clear to me from the first that the French schools and the Catholic schools generally were not in the progressive state that the Protestant schools were. My reason for coming to this conclusion was on account of the class of teachers generally employed, and the wretched shape of the schools, both as to grounds, buildings and furniture, notwithstanding that in most of the school districts, the school taxes should be sufficient to maintain the schools in a much better shape as to comfort and efficiency. Seldom did I find a French teacher that could teach or even speak English. I called on His Grace the Archbishop, and asked him if there could not be some improvement. He said that he was looking forward to a better state of affairs, but at that time he was not prepared to make much change, as the class of teachers necessary was not easily procured, and if they were, the accommodation they would require was not procurable. So matters went on as of old from year to year. In the year of, I think, 1886, I spoke to the Hon. John Norquay and asked him if he could not do something to improve the French and Catholic schools so as to put them on a level with the Protestant schools of Kildonan and St. Andrews, and other country Protestant schools. Mr. Norquay's answer was that the Catholic School Board had the matter entirely in their own hands, and he saw no reason why their schools should not be as efficient as the Protestant schools. I may here say that I don't think that 25 per cent of the French youths can write their names, while I think I am safe in saying that 75 of the Protestant natives can read and write.

When the present Provincial Government came into power, or soon after, I called on Mr. Martin and asked him if he would take up the school system of Manitoba and remodel it in some way that would improve them, and in particular the Catholic schools. He, Mr. Martin, said then that he did not think it was within the jurisdiction of the Provincial Government to do so, but it rested with the Federal House, but he promised me to give the matter his consideration. I afterwards spoke to Mr. Smart, Minister of Public Works, in that strain. He also said he would think the matter over. So when the present School Act of 1890 was spoken of, and after its adoption, I gave it my humble and strongest support, and have no reason to regret the course I took, but am more convinced than ever that it is the best for the country and for the Catholics in particular, that they would be the greatest gainers, and would accept the School Act if the French clergy would allow them to do so.

Another grievance many Catholics complain of is that our school property, instead of being held by the Catholic trustees, for the people, is held in fee simple by the Superintendent General, or head of the Oblate Fathers in France, and although in Winnipeg, all the cash invested belongs to the people, the Oblate Fathers always charged a good rent for the Catholic schools. I may also state that about three years ago I canvassed some of the members of our City School Board to find out if there might not be a compromise effected as regards our city schools. My idea was to try and introduce something known, as the Faribault system, as then and now in force in Minnesota, that is, our Catholic friends would engage Catholic teachers qualified as the law requires, if our City School Board would provide funds for their payment. I received reasonable encouragement from the City School Board, and then waited on our clergy and made the suggestion as above. The idea was heartily received by Father McCarthy for himself, and on behalf of the parish priest, then Father Fox. The former asked me to wait on the Bishop and lay the matter before him, and said he had no doubt but His Grace would think favourably of the scheme. I said I would not go alone, but if the priests would nominate two other parishioners to go with me, I would see what could be done on the lines mentioned above. The two gentlemen named by the priest, and myself, visited His Grace, and to my surprise were told that it was useless to suggest any compromise, and the interview was cut short, His Grace adding that he was advised by his eastern friends to accept nothing short of the repeal of the 1890 School Act, as he honestly considered the constitution and bill of rights entitled him to on behalf of his people.

## Manitoba School Case.

There were several letters passed between His Grace and myself, all on the lines as described, but in the most courteous and friendly way. Soon after this, the English-speaking people were granted what His Grace said, was a special favour to them, calling from Boston, Mass., a very clever young Irish priest named Father Maloney. He was not long in Winnipeg till he became very popular, even with the French people. The schools of the city soon received his attention, and he visited them, both Protestant and Catholic, and came to the conclusion at once that the Catholic people would have to do one of two things, either greatly improve their own schools or send their children to the public schools. These independent opinions brought down on him the wrath of the powers that then existed, and he had to leave us in a hurry, not, however, before a public meeting of the parishioners was called and a committee named and appointed to call on His Grace and remonstrate, and ask for Father Maloney's retention, but His Grace advanced other and stronger reasons, from his standpoint, why Father Maloney should be let go. I may here say that I was one of the committee above mentioned.

About 18 months ago there was a public meeting of Catholic school supporters called by the trustees, I believe of a school district in the parish of St. Norbert, I think all French people; and at that, or a subsequent meeting, a resolution was carried that the school districts should come under the late School Act. This, notwithstanding the protest of the parish priest, would have been carried out but for the influence of His Grace being brought to bear on the trustees and people, in fact there is scarcely a day that there are not Catholics calling on me and expressing their wish that matters should shape themselves so that they could send their children to the public schools. Of course, they do not like to express themselves publicly lest coming into contact with the clergy.

Mr. MCCARTHY.—You said a moment ago that a resolution was carried in the parish of St. Norbert, that the school district should come under the late School Act.

Mr. O'DONOHUE.—I meant to say the present School Act.

Hon. Mr. OUIMET.—How does it read in your statement?

Mr. O'DONOHUE.—I read it, the late School Act.

Hon. Mr. OUIMET.—Was it written by you?

Mr. O'DONOHUE.—Yes, sir.

Hon. Mr. OUIMET.—And it reads that way now?

Mr. O'DONOHUE.—It reads that way now. My intention was to say the Act of 1890. It was written since I left home.

Hon. Mr. OUIMET.—Could you produce that resolution that you referred to passed by that School Board?

Mr. O'DONOHUE.—I do not know, the proceedings appeared in the Winnipeg papers at the time. The resolution was carried at a school meeting.

Sir MACKENZIE BOWELL.—The Winnipeg papers are in the Library, perhaps you could find it there.

Mr. O'DONOHUE.—It was a year ago last summer, as near as I can remember it now.

Sir ADOLPHE CARON.—That is close enough to find out.

Mr. O'DONOHUE.—The school matter dragged on a long time much as stated above, till Father Langevin, now Bishop elect, became parish priest, when he took hold of the matter in a much more vigorous manner. Every Sunday we were treated to a dose of school matter from his standpoint, in the shape of petitions and processions to the Government, &c. In his warm remarks from the pulpit he would call the Government thieves and scoundrels, those of his congregation that did not fall in with his views, blackguards, &c. I may here say that during my candidature for school trustee last December, Father Langevin opposed me strongly, and canvassed one of the Catholics that signed my nomination papers to withdraw his support from me. Notwithstanding all this, 90 per cent of the Catholics in my ward voted for me, many of them taking out their vehicles to help my election. I consider this very strong evidence that the bulk of the Catholics are ready to accept the present School Act if left to act for themselves. You will remember the election referred to was by ballot.

I may also say that two of my daughters have taught in the public schools of Winnipeg and at present there is one teaching there. They both are, I think, good practical Catholics, and would resist any religious exercises offensive to the Catholic

Church, and they always reported to me that they neither saw or heard anything offensive to Catholics. In closing my remarks I wish to be understood as not referring to the convent schools, which I have good reason for saying are all even more efficient than they are represented to be, and very many of our Protestant friends take advantage of their usefulness for the education of their daughters.

*By Mr. Ewart:*

Q. Do you speak French?—A. No, sir.

Q. And you judge of the efficiency of separate schools when you do not understand what is going on in them?—A. Yes. It is not very hard to pass an opinion on the majority of the country schools.

*By Sir Adolphe Caron:*

Q. Did you write that out yourself?—A. I wrote it out. I wrote it out yesterday in the Queen's Hotel, and got it typewritten. Mr. McCarthy told me I had better write it out. I did not know what I would be asked to say. That is just how it was done, it was written yesterday and typewritten to-day.

*By Sir Charles Tupper:*

Q. I would like to ask you how many schools you personally inspected before that conversation you referred to?—A. I was in the great bulk of the schools along the river.

Q. Can you tell us any of the schools you had particularly in mind when you discussed them with Mr. Norquay in 1886?—A. Yes, I was in a school about four or five miles east of Ste. Anne, a French school.

Q. Who was the teacher?—A. I could not tell you that now. I was in two schools in the parish of St. Norbert.

Q. Can you give the names of the teachers in any of the schools?—A. I can give one of them; for the teacher came to my house several times. She felt that there ought to be something done for the schools, and she knew what it was, for she lived, and cooked, and slept in the school-house. That was done in more schools than one. Her name was Miss Richot.

Q. What year was that?—A. That would be about 1887 or 1888.

Q. I was referring to the schools that you had been in personally before 1886?—A. I was in her school, and I was in a school at Oak Point.

Q. Was that a French school?—A. Yes. Very seldom I found any teachers that could talk English. My business led me a good deal through the country. Mr. Daly knows my business. I was on the board all the time I have been there.

Q. Then, as to the percentages. When you speak of the percentage of French who can read and write, and the percentage of English who can read and write, how do you make out that calculation?—A. I will tell you how I come to that. I have been in the agricultural implement business since I came to that country; I take a great many notes, and in addition to that, I have collected a lot of notes for persons in Ontario; and from the class of notes, and from the way they were signed, I came to that conclusion.

Q. Did you reduce that calculation to paper? For instance, did you add up the number of people who could speak French?—A. No, I did not, I compared my notes.

Q. Then practically it was a guess from your experience?—A. I went over the notes in my possession.

*By Hon. Mr. Ives:*

Q. The notes were given by elderly people, I suppose, rather than by children?—A. There were a good many young people.

Q. They were not given by school children?—A. No.

*By Sir Charles Tupper:*

Q. Can you tell us to-day about how many people you came across in selling these goods, who could not read or write—within ten or twenty?—A. No, I do not think I could.

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Q. You did not keep a record?—A. I have had several hundred notes in my possession, but I have not got so many just now.

Q. And it was from your experience gained in that way that you made this estimate?—A. Yes.

*By Hon. Mr. Montague :*

Q. Was this true in the case of English people, a great majority of whom had attended school in the provinces from which they had emigrated to Manitoba?—A. I am talking of the natives only, I am talking of the half-breeds.

Q. Do you remember what was the percentage of the French?—A. About 25 per cent of the French half-breeds and 75 per cent of the Scotch half-breeds, in a rough way. I might be wrong a little, one way or the other, I cannot vouch for the accuracy of it at all. Of course, I am speaking altogether of the natives.

Mr. McCARTHY.—Before discussing this matter, I desire to say that I think you ought in fairness to allow me an opportunity of answering the affidavits which have been filed here to-day. There was no ground at all to suspect, and no notice was given of any intention to use affidavits; and if this matter is to be determined upon affidavit evidence, it is manifest, if there is to be fair-play, that there must be an opportunity for answering those affidavits, and no such opportunity has been afforded. On the contrary, my learned friend who has used those affidavits in support of no less than four arguments, and as to three of them they are based solely upon affidavits, gave formal notice to the Attorney General, and that formal notice was taken from the forms which are used in the courts. He winds up by saying:—

“Take notice, that in default of anyone appearing at this time to speak on behalf of the Government of Manitoba, then His Excellency the Governor General in Council may proceed to hear such appeals in support.”

Now, my learned friend knows perfectly well that if affidavits are to be used, a notice must be given that they are to be used, and opportunity must be afforded of seeing them and answering them. The affidavits to be used are always mentioned in the notice, and I hold in my hand the formal notice which was served upon the Attorney General. I think you will see the fairness of my claim. I am quite prepared, of course, to discuss the matter from the historical standpoint, from a knowledge that has come to us all, and from a legal standpoint; but to meet a case upon affidavits, those affidavits having been carefully kept in my learned friend's possession until the last moment, without a hint being given that they would be used, would be so gross a perversion of justice that I do not see how I can be forced into an argument until an opportunity is afforded me of meeting those affidavits.

Hon. Mr. OUMET.—What is the conclusion of your argument? Do you ask for something?

Mr. McCARTHY.—The conclusion of my argument is that I want an opportunity of answering these affidavits. That is my application. My learned friend made nine arguments, four of these are based partly upon affidavits, three of them altogether upon affidavits. Now, it never entered into my head that this matter could be determined upon affidavits. If it is to be determined upon affidavits, they cannot be produced upon one side only, and of course an opportunity must be afforded me of answering these affidavits by others.

Mr. EWART.—My learned friend's objection, if there is anything in it, comes entirely too late. If he was going to object to these documents being read, the time for him to take objection was when I put in the first one, if he wanted time to answer them. Not until he heard our whole argument does he ask for an adjournment for the purpose of answering these affidavits. My learned friend, however, has done exactly what I have done, he has gone upon the same lines of procedure. We have brought such evidence here as we thought proper: he did not tell me what his evidence was going to be, nor did I tell him what mine was going to be. If the notice had been a little longer, I would have sent my learned friend copies of the affidavits, out of courtesy merely, but as the notice was short, I was unable to get the affidavits completed until after I had arrived at Ottawa. My learned friend has got Mr. O'Donohue here, and he

has given testimony. He gave it orally, we have put in our testimony by affidavit. I could have got all these gentlemen here no doubt, at great expense and asked them to make speeches, and they could have had all their testimony type-written upon foolscap, and read it off. I will merely mention that Mr. O'Donohue has come here, not as a witness for me at all, but on his own behalf and on behalf of those whom he says he represents. I think there is little doubt that Mr. O'Donohue comes here at the instance of the Local Government: I do not think it is at all probable that Mr. O'Donohue is paying his own expenses here to make the statement he has done. I do not think I am at all wrong in suggesting that Mr. O'Donohue is here for the purpose of giving testimony for the Provincial Government. Therefore, I say that my learned friend has been proceeding upon the same lines, and he has no more right to ask for an adjournment to answer my affidavits than I would have to ask for an adjournment to answer the statements of his witness. If he makes a distinction, saying mine are affidavits, and his are statements, I am content to take mine as statements and not affidavits: I am content to say that so far as this court is concerned, they should be regarded simply as statements and not as sworn documents.

Sir MACKENZIE BOWELL.—Of course, Mr. Ewart must remember that Mr. McCarthy objected in the first place, not very strenuously, I admit, to the reading of these affidavits. He must be permitted, however, to answer them.

Mr. EWART.—My learned friend hardly objected, he rather presumed that he could not object.

Hon. Mr. MONTAGUE.—I think Mr. McCarthy offered his objection at the time.

Mr. MCCARTHY.—I certainly do not think I had any right to do more than to point out as I did that it was irregular. I do not know anything about what this Council will do. It seems to me if the matter was to be discussed upon public grounds, as provided by Mr. Blake's Act to which reference was made, in any question of fact to be tried, the reference should have been made under that Act. Without reading the affidavits, I do not know how anybody can determine the matter.

Sir MACKENZIE BOWELL.—It has been suggested that we should adjourn four or five minutes to consider this question.

Hon. Mr. OUIMET.—Suppose, Mr. McCarthy, that you go on with your argument. I presume you are very well cognizant of the facts upon which you are going to base that argument, and at the end of your argument, permission might be given to you to file affidavits.

Mr. MCCARTHY.—It would be very inconvenient to do that. If I am to be of any service at all upon this case, I must base my arguments upon facts and not upon mere suppositions. I do not know what is to be said of this intimation of bad faith in the three arguments which have been adduced. I want to see what reply can be made, and, of course, I cannot argue that upon any assumption which I do not know and which I have not before me.

Hon. Mr. OUIMET.—These facts have been before the public for several years.

Mr. MCCARTHY.—Never did I hear of them, and I know nothing about them.

Hon. Mr. OUIMET.—They were discussed in the Manitoba Legislature, and they were discussed here, and several times within your hearing.

Mr. MCCARTHY.—All I can say is that I know nothing about these facts, and never supposed any claim was to be based on them.

Hon. Mr. OUIMET.—I never suspected you were ignorant of all these facts.

Mr. MCCARTHY.—There are a good many other things that you never suspected.

Sir MACKENZIE BOWELL.—I think I have read some of those affidavits before.

Hon. Mr. MONTAGUE.—Some of them were in Mr. Ewart's speech.

The Privy Council retired for ten minutes to consult together, and returned.

Sir MACKENZIE BOWELL.—The Council has decided to request Mr. McCarthy to proceed with his argument upon points of law, and upon such points of historical interest as he may desire to submit: but they will give reasonable time afterwards to produce affidavits in reply to those produced by Mr. Ewart. But no affidavits of any new matter can be produced. Mr. Ewart can be heard upon them upon a subsequent day, to be fixed at the end of the argument.



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Mr. EWART.—Allow me to say that that would throw the matter over so late that it would be impossible that anything could be done this year; and rather than that should happen, I would withdraw the affidavits and rest the case upon the other material.

Mr. MCCARTHY.—I can not object to that course.

Sir CHARLES TUPPER.—Then we will consider them withdrawn.

Hon. Mr. OUIMET.—Do you not wish to answer that statement of Mr. O'Donohue?

Mr. EWART.—In my argument I shall say something about it.

Hon. Mr. OUIMET.—Then there is nothing in the way of arguing the case to-morrow morning.

The Privy Council adjourned until 11 o'clock a.m. on Tuesday morning.

Affidavits referred to in Mr. EWART's opening argument and filed as Exhibits A, B, C, D, E, F, G, H, J, J, K, L, M, N and O, were subsequently withdrawn.

OTTAWA, 5th March, 1895.

The Privy Council met at 11 o'clock a. m.

*Present* :—Sir Mackenzie Bowell, Sir Adolphe Caron, Hon. Mr. Costigan, Sir Charles Tupper, Hon. Mr. Foster, Hon. Mr. Haggart, Hon. Mr. Daly, Hon. Mr. Ouimet, Hon. Mr. Ives, Hon. Mr. Dickey, and Hon. Mr. Montague.

Mr. MCCARTHY.—Mr. President and Gentlemen of the Privy Council: Before commencing my statement, perhaps you will allow me to read something in confirmation of Mr. O'Donohue's statement made yesterday. Some of the members of the Council asked for reference to a statement which Mr. O'Donohue said had been published, he thought, in the summer of 1893. Dr. Blakely has discovered the article referred to in searching the paper. I refer you to the *Winnipeg Daily Tribune* of the 29th June, 1893, from which I now read :—

“A member of St. Mary's Church complained to a *Tribune* man that for five consecutive Sundays the only discourse from the pulpit of said church has been exclusively devoted to the school question, and a large number of the congregation think it is about time to change the subject to some discussion not quite so stale and unprofitable. He expressed the hope that Father Drummond, who is announced to take the pulpit next Sunday, will preach to them on something more instructive and acceptable to the congregation. Last Sunday, the 25th inst., Rev. Father O'Dwyer, during his remarks on 'Candid Catholic,' said, 'He had the proof, or could prove, that Protestantism was taught in the city schools, and that the Catholic teachers in some schools were not allowed the privilege of knowing anything about such teachings.'”

“Our informant said that all Catholic teachers in the city know the untruthfulness of Rev. Father O'Dwyer's remark. He also stated that on the Saturday, the 24th inst., a meeting of the ratepayers of St. Norbert Schools (Ritchot) was held for the purpose of considering the present condition of their schools, and after a full discussion of its position, came to the conclusion to elect a board of trustees under the present school law, accept the Government grant, and hire a qualified teacher, etc. Father Ritchot, parish priest of St. Norbert, being alarmed at the apparent independence of the ratepayers, despatched a messenger to inform His Grace at St. Boniface of their move for freedom, and on Sunday, the 25th inst., another meeting was called, at which the Bishop's message was delivered, which was that no change was the order of the church; and hence there was nothing done. But the people have become so thoroughly aroused to the necessity of a change in school matters, that they have called another meeting

for this (Thursday) evening and the advocates of public schools are bound, if possible, to come under the Government school system, and in the future to give their children the benefit of the school tax which they have never enjoyed up to the present."

I may say, at the outset, and for reasons which I will give before I close, that I do not come here at all on behalf of the Provincial Government recognizing this tribunal as sitting in a judicial capacity. I quite concede that the judgment of the Privy Council in the late case determines that the Governor General in Council has jurisdiction to make a remedial order, and that that remedial order being made and disobeyed, the Parliament of this country will have authority or jurisdiction to carry that remedial order into effect by legislation. But I will endeavour to show that this tribunal is not sitting in a judicial capacity, and I desire, at the outset, to have it clearly understood that the province which I represent here does not recognize the Council sitting in this matter as being any more than the Council sitting in any other matter, namely, as advisers of His Excellency the Governor General. Of course I need not say to the members of the Council who have had more experience than I have had in such matters, that it is not an unknown thing—I will not say that it is a common thing, but it is not unknown—for Council to hear arguments on matters which they have thereafter to determine, matters relating to private affairs and sometimes, public questions. I myself have appeared twice, as I recall, and perhaps oftener, before the Council to argue such questions; once with reference to a public matter, and once with reference to a private matter, which afterwards became a public question, I appearing on behalf of a private individual. Having said so much in a preliminary way, I think it will be more convenient if I deal first with the argument of my learned friend Mr. Ewart, who appeared here on behalf of a section of the Roman Catholic population of Manitoba—because, as I am instructed, my learned friend does not represent the Roman Catholic minority in any concrete or organized form. I am not at all disputing his right to appear, but I want to draw your attention to the fact that, as I am instructed, and as I think I shall be able to show, Mr. Ewart appears only for a section of the Roman Catholic minority, and that no means have been taken to ascertain the views of that minority as a body, that there is nothing to show even that he represents the majority of that body, though it might be found that he spoke according to their views if a poll or census of that minority had been taken. My learned friend, in the first place, dealt with what he called the historical question, that is to say the bargain or treaty or compact that was made between the government of this country and the inhabitants of the prairie country prior to the passage of the Manitoba Act. My own view is—and I put it before you with great deference—that you have nothing at all to do with the negotiations which led up to the passage of the Manitoba Act, but the Manitoba Act must speak for itself and that you have to find within the four corners of section 22 of that Act all the powers that are conferred upon the Governor in Council or upon the Parliament of Canada. But in one sense possibly it may be pertinent to the argument, because, as I have already been pointing out, you are not sitting here in a judicial capacity, and therefore are not bound by the same strict rules of construction as a court of law would be. It may therefore be pertinent, with a view to establishing a certain line of policy as advisable to be adopted, to endeavour to show as my learned friend has done, that some arrangement had been made between the people of the province and the Government of Canada prior to the passage of the Manitoba Act, prior to the union of that territory with the Dominion of Canada. I am sorry to say that my investigation has not led me to the same conclusion by any means upon the historical matter of fact as that which my learned friend has stated he has arrived at. On the contrary, I think it can be demonstrated, and I desire, therefore, to make it as clear as I can, that the only arrangement that was made so far as the inhabitants of that country were concerned, was based upon lists of rights or bills of rights, whichever they may be called, in which no reference whatever was made to the question of public schools. Now I caution the Council, the members of which have no doubt had the opportunity of perusing the book compiled and edited by my learned friend Mr. Ewart, not to rely wholly upon the statements made in that publication. I am not at all imputing to my learned friend bad faith, I am not imputing a desire to misrepresent; but he has been so long bound up

with the advocacy of this question that it is hardly reasonable to expect that he should be always in the judicial frame of mind one ought to be in who purposes to write an impartial history of events. He states in his books and he has argued here before you that there were four bills of rights prepared, and in that book you will find two if not three of these bills of rights given—if my memory serves me right the number is two. My learned friend's argument is that it was the fourth bill or list of rights that was handed to the delegates who were invited to visit Ottawa, and who did, in point of fact, visit Ottawa for the purpose of making terms with reference to the entrance of that part of the present Dominion of Canada into confederation. Now I take issue with my learned friend with regard to what is called the fourth list or bill of rights as being the document that was entrusted to these delegates. On the contrary, I think I shall be able to satisfy you by the clearest possible testimony—so far as one can have testimony upon a matter of that kind, the testimony of history—that the bills of rights that were prepared, so far as we know or so far as we can learn, by persons who professed to be the representatives of the people, did not contain any reference whatever to the question of separate schools, contained no demand that the school system should be in any way protected or in any way guarded by the Government or by the authority of the Act which was to take this province into the Dominion. Now just let me give you the history of this subject and let me fortify my statement with regard to it as far as I possibly can do so by the public documents; because, of course, I am not going to rely in the slightest degree upon anything that is not common to us all, such as written histories and public documents, etc., such as the members of the Council would have a right to look at in forming their opinion on this question. I speak with submission, and I speak subject to correction, when I say that the first that was heard of this fourth bill of rights was in 1890 in a letter published in the *Winnipeg Free Press* by the late Archbishop Taché: that the publication of that so-called fourth bill of rights which His Grace alleged had been given to the delegates when they visited Ottawa, was followed immediately by a letter from Mr. Taylor controverting the statement, Mr. Taylor professing to know the facts of the case. Following Mr. Taylor's first letter a controversy raged between Mr. Taylor on one part, and another gentleman, I think Mr. Hay, on the other, and His Grace the Archbishop, and that controversy I do not know ever to have been settled to the mutual satisfaction of these contending parties. But, up to that time, nothing at all had been heard, so far as I know, of this fourth bill of rights. Let me call your attention to what did take place, according to the historical records, with reference to this matter. There was a body elected in November, 1869, and in Mr. Ewart's book,—and I think that is not an inconvenient term—this body is called the Council of November. This Council consisted of 24 members. It prepared a list of rights which is dated 16th, December, 1869. I think my learned friend will agree with me and save me the trouble and you the delay of my referring to it, that there was no claim of separate schools made in that bill of rights.

Mr. EWART.—Yes.

Mr. MCCARTHY.—You will find that bill of rights at page 333. I think it was on the 4th of that month that delegates were sent from Ottawa to the Red River country, these delegates being the Very Rev. Grand Vicar Thibault, Col. de Salaberry and Mr. (now Sir) Donald A. Smith. Those delegates reached the Red River settlement. Sir Donald Smith seems to have taken the principal part in the negotiations which ensued. Now that council of 24—it is not important to state to you how or why—were superseded by a council which is called the Council of Forty. You will find it stated in Mr. Ewart's book, at page 349, that this council of forty also prepared a bill of rights, and that bill of rights was submitted to Sir Donald Smith. Sir Donald Smith made comments upon, reported upon, that bill of rights upon his return here to the capital. That bill of rights is to be found in the Sessional Papers of 1870. I think it is not to be found in Mr. Ewart's book, but is included as an appendix to Sir Donald Smith's report. You will find it in the Sessional Papers of 1870, No. 12 of vol. 5. Sir Donald Smith states the fact of his having met this council of 40, and of the council having submitted to him this bill of rights which he dealt with. At page 3 of the report I have mentioned, you will find the following:—

"As is generally known the result of the meeting was the appointment of forty delegates, twenty from either side to meet on 25th January, 'with the object of considering the subject of Mr. Smith's commission, and to decide what would be the best for the welfare of the country,' the English as a body, and a large number of the French declaring their entire satisfaction with the explanations given, and their earnest desire for union with Canada."

He gives details of how that body was elected and continues (page 4):

"The delegates met on the 25th and continued in session till the 10th February. On the 26th, I handed to their chairman, Judge Black, the documents read at the meetings of the 19th and 20th January, and, on the 27th attended the convention by appointment. I was received with much cordiality, by all the delegates, explained to them the views of the Canadian government, and gave assurances that on entering Confederation, they would be secured in the possession of all rights, privileges and immunities enjoyed by British subjects in other parts of the Dominion; but, on being requested by Mr. Riel to give an opinion regarding a certain 'list of rights,' prepared by his party in December last, I declined to do so, thinking it better that the present convention should place in my hands a paper, stating their wishes, to which I should 'be happy to give such answers as I believed would be in accordance with the views of the Canadian Government.' The convention then set about the task of preparing a 'list of rights' embodying the provisions upon which they would be willing to enter the confederation. While the discussion regarding this list was going on, Mr. Riel called on me and asked if the Canadian Government would consent to receive another province."

I pass on, for this part is not pertinent to the matter I am now dealing with. On page 5, the report continues:—

"The proceedings of the convention, as reported in the *New Nation* newspaper, on the 11th and 18th February, copies of which I have had the honour of addressing to you, are sufficiently exact and render it unnecessary for me here to enter into details; suffice it to say that a large majority of the delegates expressed entire satisfaction with the answers to their 'list of rights,' and profess confidence in the Canadian Government, to which I invited them to send delegates, with the view of effecting a speedy transfer of the territory to the Dominion, an invitation received with acclamation and unanimously accepted, as will appear by resolution hereto annexed, along with the list of rights and my answer to the same. The delegates named were John Black, Esq., recorder, the Rev. Mr. Ritchot, and Mr. Alfred H. Scott—a good deal of opposition having been offered to the election of the last named of the three."

"The proceedings of the convention came to a close on the 10th February by nomination of a provisional government, in the formation of which several delegates declined to take any part. Governor MacTavish, Dr. Cowan, and two or three other persons were then released, and the Hudson's Bay Company's officers again allowed to come and go at pleasure, but I was still confined to the fort: Riel, as he expressly stated to Judge Black, being apprehensive of my influence with the people in the approaching election."

All I am quoting for is to show you the nature of the appendix, the list of rights. That document contains nineteen articles, but amongst them is not to be found any reference to the question of separate schools, though I think there is some reference to the question of education. There is one article to which I may draw your attention and which provides "that there should be no interference by the Dominion Parliament, in the local affairs of this territory other than is allowed in any of the provinces in the confederation; and that this territory shall have and enjoy in all respects, the same privileges, advances, and aids in meeting the public expenses of this territory as the confederated provinces have and enjoy."

The only reference that is made to education is in paragraph 9.

"That while the North-west remains a territory, the sum of \$25,000 (twenty-five thousand dollars) a year be appropriated for schools, roads and bridges."

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Now, shortly after, the unfortunate incident——

Hon. Mr. OUMET.—Did you state who had sent Sir Donald Smith to the territory?

Mr. MCCARTHY.—Yes. The Government here at Ottawa. He was sent with Col. de Salaberry and the Very Rev. Grand Vicar Thibault; but the others do not seem to have taken part in the negotiations and did not make reports. Sir Donald Smith seems to have borne the burden of the negotiations then carried on with those who, at the time, represented the Red River Settlement. Now that meeting with Sir Donald Smith is referred to in Mr. Begg's recent history, from which I find my learned friend has quoted in his work. You will find it referred to at page 59 of the first volume, but it does not add anything to what I have stated. Of course I have quoted from the original document as published in the Sessional Papers, and the history is, of course, based upon—or purports to be—that original document. These delegates were to have left on 10th February, but, unfortunately, the murder of Thomas Scott intervened, and affairs were in a dreadful condition as we can easily imagine, and the delegates did not leave at the time intended.

Hon. Mr. DICKEY.—Did these transactions take place before the murder?

Mr. MCCARTHY.—The murder took place upon the 4th of March. The Council was disbanded and a new election took place on the 26th February, so now we have three different bodies—the Council of November which met in December: the Council of 40, which met Sir Donald Smith, and the Council elected on the 26th February. On the 4th March the unhappy incident took place to which I have referred, and this assembly which was elected, met on 4th March and continued to 26th March.

Mr. EWART.—There were twenty-four members in that body.

Mr. MCCARTHY.—I am prepared to accept my learned friend's statement as regard to that. What appears in Mr. Ewart's book is that the list of rights shown to Sir Donald Smith was not the list of rights which was sent to Ottawa and formed the basis of the negotiations here. It was intended that that list of rights should be taken by the delegates who were then appointed to come to Ottawa, but my learned friend's argument, and the statement in his books is that they did not leave for Ottawa—as I believe the fact to be—on 10th February as intended, that they did not leave until after the meeting of the new elected body of twenty-four; that it was not until about the end of the month—the 26th or 27th—that they left. So you will see that upon the main facts we are agreed. Now, upon the 26th or 27th March the main bill of rights was prepared, and it appears from the history—though I do not find the record of it anywhere else than in this only history we have of it, that it was this third bill of rights which was handed to the delegates who came here to Ottawa, and which formed the sole instructions from the provisional council—because by this time Riel had organized a so-called government and provisional council. You will find that His Excellency the Governor General at the time, as well as his responsible advisers, refused to recognize this provisional government—refused to read or look at, formally or officially, this third bill of rights which the delegates brought. It also appears in some of the statements, at all events from the report made by the Rev. Mr. Ritchot, upon his return to the territories, that they were told that they might advocate what was stated in this bill of rights, but the Dominion Government could not recognize the authority of the provisional government and look at this bill of rights. This bill of rights—which, as I say, contained no reference to separate schools—is the one which Mr. Ewart in his book calls bill of rights No. 3, and you will find it set out at page 365, where it appears in parallel column with the one which is called bill of rights No. 4. Now it was bill of rights No. 3 that was taken as stated by the historian Begg—whose fairness I do not think my learned friend impugns and you will find it in volume one at page 476. This was handed to the delegates with the following letter:—

"Sir,—The President of the Provisional Government of Assiniboia, (formerly Rupert's Land and the North-west), in council, do hereby authorize and delegate you to proceed to the city of Ottawa, and lay before the Dominion Government the accompanying list of propositions and conditions as the terms upon which the people of Assiniboia will consent to enter confederation with the other provinces of the Dom-

inion. You will also herewith receive a letter of instructions, which will be your guide in the execution of this commission.

"Signed this twenty-second day of March in the year of our Lord one thousand eight hundred and seventy.

By order,

"THOMAS BUNN,  
"Secretary of State."

Nothing could be more formal than this. And here is the letter of instruction accompanying the same :

"SIR,—Inclosed with this letter you will receive your commission and also a copy of the conditions and terms upon which the people of this country will consent to enter into the Confederation of Canada. You will please proceed with convenient speed to the city of Ottawa, Canada, and on arriving there you will in company with the other delegates, put yourself immediately in communication with the Dominion Government on the subject of your commission. You will please observe with regard to the articles numbered 1, 2, 3, 4, 6, 7, 15, 17, 19 and 20, you are left at liberty in concert with your fellow commissioners to exercise your discretion ; but bear in mind that, as you carry with you the full confidence of this people, it is expected that in the exercise of this liberty, you will do your utmost to secure their rights and privileges, which have hitherto been ignored.

"With reference to the remaining articles, I am directed to inform you that they are peremptory. I have further to inform you that you are not empowered to conclude finally any arrangements with the Canadian Government, but that any negotiations entered into between you and the said government must first have the approval of and be ratified by the Provisional Government before Assiniboia will become a province of confederation."

Then follows the list of rights which is called No. 3, and which does not contain any reference to separate schools. The paragraph referring to separate schools is to be found in the document called bill of rights No. 4, the seventh section or paragraph. So, I think, I establish, so far as anything of that kind can be established, by historical reference, that, up to this time at all events, no documents had been sent by the people of the territories making any demand with regard to separate schools. Now the delegates came to Ottawa. If you want to follow the question further you will find the facts in the evidence included in the Journals of 1874. I dare say the President (Sir Mackenzie Bowell) will remember—I think he was in public life at the time—the inquiry brought out by reason of the assertion that was made that there had been an agreement for amnesty. I think that was the primary cause of this commission, and the evidence collected will be found in the Journals of 1874, Vol. 8. Sir John Macdonald's evidence to which I shall briefly refer you is at page 103, though I do not refer to it altogether. He says :—

"Sir George Cartier and I had been appointed, I think, by Order in Council, to represent the government in dealing with these delegates.

"Judge Black and Father Ritchot met Sir George and myself in Sir George's house. Mr. Scott was absent from some accidental cause. They presented themselves as delegates appointed at a meeting of the people at Winnipeg. They presented a resolution or resolutions passed at that meeting.

"Judge Black took me aside and stated that they had received and brought with them an authority from Riel as chief of the Provisional Government to act on behalf of that Provisional Government, and also a certain claim or bill of rights, prepared by that government. He asked me what was to be done with the authority and the 'bill of rights.' I told him they had better not be produced as the Governor General could not recognize the legal existence of the Provisional Government and would not treat with them as such. I stated, however, that the claims asserted in the last mentioned bill of rights could be pressed by the delegates, and would be considered on their own merits."

This is still dealing with the bill of rights No. 3. I think I am right in my statement that these were the only lists or bills of rights heard of until 1890—and I was

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not pretending to be very familiar with the history of Manitoba, for the history has not been very detailed, and I can only state that that is the conclusion I have arrived at from what I have seen, and leave it to the better judgment of the Council to say whether I am right or wrong. Then, in 1890, when an attempt was made to abolish the separate schools, and only then, was the claims set up that there was a fourth bill of rights, that being the bill of rights which appears in Mr. Ewart's book as bill of rights No. 4, which was stated to have been changed or altered, not by the Council, as I understand the Archbishop's letter, not by this body of twenty-four people who prepared bill of rights No. 3—

Mr. EWART.—No.

Mr. McCARTHY.—In what do you wish to correct me?

Mr. EWART.—The Assembly of twenty-four did not prepare bill of rights No. 3.

Mr. McCARTHY.—Who did?

Mr. EWART.—The Executive Council did.

Mr. McCARTHY.—It may be so. I do not know and I do not care. But I say that what is claimed is that this bill of rights, before it was handed to these delegates, was changed or altered by some person, we do not know how, at least I have not seen any satisfactory statement, and it depends very much upon Father Ritchot's statement, in contradiction of the official documents of the time and all we know with regard to it officially. Now I have here a letter that was written on the 17th January, 1890, by Mr. James Taylor, and perhaps my learned friend can tell better than I can who Mr. Taylor is. I believe he had the custody of some document in relation to this matter.

Mr. EWART.—I never heard of that.

Mr. McCARTHY.—Mr. Taylor first wrote a letter on this subject, but unfortunately those issues of the Winnipeg paper containing it are not on the file which commences with the 13th of January instead of 1st January. But you will find first a letter from His Grace the Archbishop and subsequently a letter from Mr. Taylor to His Grace and from that the correspondence goes on. I will read you—and it is sufficient for the purpose I have in hand—the letter of the 17th January, 1890, and copied from the newspaper, I think, of the 18th of that month—

“To His Grace Archbishop Taché, of St. Boniface.

“REVEREND AND DEAR SIR,—Your letter of the 13th inst., addressed to me through the columns of the *Free Press*, has been read with very deep interest.

“Referring again to our bill of rights, I have to say that the copies in my possession are not essays that were prepared and afterwards rejected by the Provisional Government, but they are authentic copies of the bill of rights that was handed by Mr. Bunn to the delegates and carried by them to Ottawa in March, 1870.”

That is what Mr. Begg accepts as the true copy.

“Your Grace kindly states that the ‘Executives of Government—legal or illegal—do not always publish their actions, and it is very seldom that the instructions to delegates are made public.’ It happens that in this case the bill of rights was published and was issued from Government House, Fort Garry, in March, 1870. And it is the very same bill of rights that was handed by Mr. Bunn to the delegates. It differs, however, from your Grace's bill in the clauses already noticed. I may state that the late Hon. A. G. B. Bannatyne, who was a member of the Provisional Government, showed me on one occasion a printed copy of the bill handed to the delegates, which was exactly the same as the one filed away by Mr. Bunn.”

Mr. Bunn was at this time dead, I understand, but these documents were found among his papers.

“I may also state that Mr. Bannatyne directed the Hon. John Norquay as to where he would find the authentic copy of the bill of rights that had been handed to the delegates. Mr. Norquay was so thoroughly convinced of the authenticity of the document that before making his memorable budget speech of 1884 he wrote to me as follows:—

" 'March 19, 1884.

" 'MY DEAR TAYLOR,—Will you kindly send me the old bill of rights, or a copy, as presented by Black, Scott and Ritchot? I want to refer to it this afternoon in my speech.

" 'Yours truly,

" 'JOHN NORQUAY.'

" In his budget speech of 1884, Mr. Norquay dwelt particularly upon clauses one (1) and eleven (11) in our bill of rights, and also quoted from other records that were furnished to him from our archives. Allow me to say—and I do so with all respect—that Your Grace did not condemn the language of the documents used by Mr. Norquay on that occasion. I admit that Mr. Bunn may have said: 'I do not know where the record of the proceedings of the Provisional Government is,' but Mr. Bunn could also have added with truthfulness that the record was somewhere in the parishes of St. Clement's and St. Andrew's.

" Now with regard to the capacity in which the delegates were received at Ottawa, Your Grace states that 'the delegates insisted upon a written acknowledgment of their official position, and that objections were made, but on the 26th of March, 1870, the promised letter was given to the delegates by the ministers.' Your Grace must be aware that upon this occasion the delegates were not received as the delegates from the president of the Provisional Government, but, on the contrary, were received as delegates from the people of the North-west. The following is a copy of the letter showing in what capacity they were received by the Federal Government:—

This letter is among the public documents.

" 'OTTAWA, 26th April, 1870.

" 'GENTLEMEN,—I have to acknowledge the receipt of your letter of the 22nd instant, stating that as delegates from the North-west to the Government of the Dominion of Canada you are desirous of having an early audience with the Government, and am to inform in reply that the Hon. Sir John A. Macdonald and Sir George E. Cartier have been authorized by the government to confer with you on the subject of your mission and will be ready to receive you at 11 o'clock.

" 'I have the honour to be, gentlemen,

" 'Your most obedient servant,

" 'JOSEPH HOWE.

" 'To the Rev. N. RITCHOT, Ptre.,

" 'J. BLACK, Esq.,

" 'ALFRED SCOTT, Esq.'

" Your Grace does not state why the delegates did not report from time to time the arrangements they were making with the Federal Government. That not done, I maintain they were not loyal to our cause. I further maintain that they were unfaithful to the people of the North-west, when they allowed our bill of rights to be altered at Ottawa without our knowledge and consent?"

That is the charge—that the bill of rights was altered and amended here. The bill of rights they were sent with was bill of rights No. 3. It was altered here, as this gentleman states, and you will see the reason why:—

" They were solemnly warned that they were carrying with them the terms upon which the people of this country would enter the Confederation, and were told not to conclude finally any arrangements with the Canadian Government without first referring any conclusions arrived at to the Provisional Government. They concluded arrangements at Ottawa that have never been satisfactory to the people of Manitoba and the North-west, and the Federal Government, after taking advantage of us through our delegates to Ottawa in 1870, have treated us during the last twenty years more like serfs than like British subjects. They claim at the Dominion capital that on account of the arrangements entered into in 1870 (not with our consent) that we have been



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very fairly treated. I must say, however, that the Rev. Father Ritchot was not altogether silent. He told the Provisional Government of his presence at Ottawa—of the progress he was making, and of the idea of sending an expedition to this country. The last telegram sent was to Mr. Lepine, and read as follows:—

“‘OTTAWA, 10th May, 1870. ’

“‘To Mr. MAXIME LEPINE.

“‘Our affairs settled, and satisfactory. Will start next Tuesday.

“‘N. J. RITCHOT.’

“I hold the copy of Mr. Bunn's letter of the 23rd June, 1870, sent to Rev. Father Ritchot, asking him to report the result of his mission to Canada, and find it to be correct. He was the only delegate who made a report to the Provisional Government. The quotations published by Your Grace from the *New Nation*, bearing date the 24th June, 1870, are only the views that were held at the time by the editor of that journal.

“The report of Rev. Father Ritchot was made after the following manner:—”

This you will find in the paper, the *New Nation*, which was in the Library. I saw it, but I did not think it worth while to bring it up. The report was a verbal one, and appeared to be addressed by Father Ritchot to the Assembly, Riel being in the chair. Mr. Taylor's letter goes on:

“In the Legislative Assembly of Assiniboia, on the 24th June, 1870, Mr. Riel, the president, took the chair at 4 o'clock p.m. Rev. Mr. Ritchot then addressed the House in French, which was translated into English by the president. The report is a lengthy one, and I will only give those portions of it that refer to the capacity in which the delegates were received at Ottawa, and how our bill of rights was tampered with there.”

The evidence of it being tampered with first appears in this statement of Father Ritchot.

“Rev. Father Ritchot said: ‘We were received as delegates from the North-west, and privately, when we had to treat with the Canadian ministry, due respect was paid to the commission given us by the provisional government, &c.’

“‘As soon as we were recognized as delegates the ministry at Ottawa made out a list themselves which they proposed to place before parliament, and submitted it to the delegates. But we said we will have nothing to do with your list. You are not to propose the terms of treaty to us. We are sent here with certain instructions and you must hear us. We produced our list of rights, but they told us that as ministers they could not take the responsibility of introducing a bill into parliament; which would embrace all the articles specified in the list. They then drew up another list, quite different from that sent by the people of the North-west. They did it on their own responsibility, and for this reason, that if our list had been presented to parliament it would have been lost, and what would have been the issue as far as we were concerned? It would be hard to tell. The list drawn up by the ministry was submitted to us as delegates and the Governor General asked us if some arrangement might not be come to by which instead of having two lists there would be but one—and said that if it were impossible to make the two lists agree it would be necessary for him to receive and treat with the delegation in the name of England. Again we found provision made that even if we could not come to an understanding with the Governor General, a special agent had been sent out by the English Government to treat with us. I refer to Sir Clinton Murdock. In reply to the Governor General we said that we would not then decide finally, but hoped that an agreement might be made between ministers and delegates which would bring the ministerial list nearer to that of the people of the North-west and enable both parties to agree on it. This was done. An understanding was arrived at and another list was formed from the two first named. We put that list into the hands of competent men—lawyers—in order to get a thoroughly reliable opinion concerning its merits. We desired to be clear as to whether the proposed measure was one which we could reasonably accept and which Canada could reasonably offer. Those we submitted the measure to were men from different provinces of the Dominion—men who sympathized with us—and they agreed that it would be to our advantage to accept it.’”

I think that is all I need trouble you with, though the whole letter is here. However, I may quote a part of Mr. Taylor's letter in which he said :—

"Your Grace will, I am sure, agree with me when I say that when delegates from the people of the North-west found that upon their arrival at Ottawa ministers were not inclined to deal with them according to our wishes—they should have reported the facts to the people of Red River. If the Governor General who informed them of his intention to deal with them in the name of England, had also shown a disposition to be unfair, then the delegates, before leaving Ottawa, would have been perfectly justified in inviting the British Ambassador, Sir Clinton Murdoch, to come to Fort Garry, where the people of Red River would have been pleased to deal with him.

"If this course had been pursued by the delegates, then the desire of Sir F. Rogers, the Under Secretary of the Colonies, would have been fulfilled, viz., 'That troops should not be employed in forcing the sovereignty of Canada on the population of Red River should they refuse to admit it.'"

I will just add one further statement and then I am done with that part; and that is, that I think, if I may be pardoned for saying so, that you will do wisely to adopt the advice of the Privy Council and to pay attention merely to what is to be found in the Act of Parliament. Lord Herschel in delivering the judgment of that body at pages 272 and 273 states emphatically that the terms agreed upon, so far as education is concerned, must be taken to be embodied in the 22nd section of the Act of 1870. Further on he uses these words :

"It is true that the construction put by this board upon the 1st subsection reduced within very narrow limits the protection afforded by the subsection in respect of denominational schools. It may be that those who were acting on behalf of the Roman Catholic community in Manitoba, and those who either framed or assented to the wording of that enactment were under the impression that its scope was wider and that it afforded protection greater than their Lordships held to be the case. But such considerations cannot properly influence the judgment of those who have judicially to interpret a statute. The question is not what might be supposed to have been intended, but what has been said. More complete effect might in some cases be given to the intentions of the legislature if violence were done to the language in which their legislation has taken shape, but such a course would on the whole be quite as likely to defeat as to further the object which was in view."

So that I submit that what you have to deal with is the language of the section by which the jurisdiction is conferred, and that travelling outside of that and being influenced by considerations of what took place, after this lapse of time, would be to tread upon very dangerous ground indeed.

Sir CHARLES HIBBERT TUPPER.—Would not that argument be stronger if your position was that we were acting in a judicial capacity?

Mr. McCARTHY.—I said so. I said that it would be a matter binding upon a court of law, but as you were acting not in a judicial capacity, it is a matter of policy which it has been for my learned friend to urge and for me to meet. Dealing with it in that way the question of fact must arise as to whether bill of rights No. 4 was ever brought here or not, and there being no trial of that question of fact, you will plainly see how difficult it would be to come to a conclusion with regard to it either one way or another. On that question all the official papers seem to be one way and the statement of the Rev. Father Ritchot in the other direction. Now that brings me naturally enough—because I think it would be fitting for me if I follow the events chronologically—to the abolition of the Senate, which is a matter of history. But as that happened some years after the passage of the Act it may be fitting if I inquire as to the manner in which, and the principles upon which this question is to be determined by the Council of His Excellency the Governor General. There are, as I understand it, two views and perhaps three, presented with regard to that matter. One is that you are sitting as a court of law and that the matter is to be determined as a question of law would be determined in a court. Another is that the question has been disposed of by the judgment of the Privy Council and that you are only here to obey the mandate of the highest tribunal of the Empire. The third view is that you

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are to deal with the matter upon its merits and that is a view, I am very glad to say, which was pressed upon you yesterday by my learned friend, Mr. Ewart. It is upon the merits that he invokes your interference and it is upon the merits that I propose to ask you to leave matters as they are. Now I utterly deny, in the first place, that there is a word to be found in the judgment, or that there could by any possibility be anything found in the judgment which could be treated as having dealt with and disposed of this matter. What the Privy Council were asked to do was to say—(which was undoubtedly a matter of constitutional law)—whether the Governor in Council had the jurisdiction to entertain the complaint of the minority, which, in the section, is called the appeal. What the Privy Council has to determine is that there is a jurisdiction to entertain that complaint; but you are to deal with it as a matter which the Privy Council was not asked to determine and which, as I would point out, some of the Lords of the Privy Council said very emphatically they would not advise upon because it was not a matter for them to consider, so that the matter must be dealt with by this Council upon its responsibility in its ordinary capacity. Now let me draw your attention to the questions which arose in the case before the Judicial Committee of the Privy Council. What we have to deal with is subsection 2 of section 22 of the Act of 1870. That has been held to be a substantive section. May I summarize what the Privy Council have determined? They have determined that the corresponding clause of the British North America Act, section 93, has nothing to do with it. They have determined that in this matter of education you have to look for a statement of the constitutional rights of the province to clause 22 of the Manitoba Act. They have determined that subsection 2 of that section is not ancillary, is not for the purpose of giving effect to the prohibition contained in subsection 1, but is a substantive clause, which gives a right in no sense dependent upon the preceding subsection 1. Now this subsection 2 provides :

“An appeal shall lie to the Governor General in Council from any act or decision of the legislature of the province . . . affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to education.”

These are the words which confer the jurisdiction. The Judicial Committee has determined that the circumstances which exist in this case do give the right to the Roman Catholic minority of the Queen's subjects to appeal to the Governor General in Council against the Act of 1890, passed by the Legislature of Manitoba. I refer you to the record of the questions which you will find more conveniently perhaps in the commencement of the judgment of the Lord Chancellor, at page 268. The first question is as follows :—

“Is the appeal referred to in the said memorials and petitions and asserted thereby such an appeal as is admissible by subsection 3 of section 93 of the British North America Act of 1867, or by subsection 2 of section 22 of Manitoba Act, 33 Vic. (1870), chap. 3, Canada?”

The answer to that question is that this is an appeal permitted by the Manitoba Act, but not by the British North America Act. The second question is :—

“Are the grounds set forth in the petitions and memorials such as may be the subject of appeal under the authority of the subsections already referred to or either of them?”

The answer to that is : Yes; they are. The third question is :—

“Does the decision of the Judicial Committee of the Privy Council in the cases of *Barrett v. the City of Winnipeg*, and *Logan v. the City of Winnipeg*, dispose of or conclude the application for redress based on the contention that the rights of the Roman Catholic minority, which accrued to them after the union under the statutes of the province have been interfered with by the two statutes of 1890 complained of in the said petitions and memorials?”

The answer is that these judgments do not conclude the application. The fourth question is :—

“Does subsection 3 of section 93 of the British North America Act of 1867 apply to Manitoba?”

That is already included in question 1, and of course the answer is : No. The next question is :—

“Has His Excellency the Governor General in Council power to make the declarations or remedial orders which are asked for in the said memorials and petitions, assuming the material facts to be as stated therein, or has His Excellency the Governor General in Council any other jurisdiction in the premises?”

I will just for a moment pass over and return to it again. The next question is—

“(6.) Did the Act of Manitoba relating to education passed prior to the session of 1890 confer on or continue to the minority ‘a right or privilege in relation to education’ within the meaning of subsection 2 of section 22 of the Manitoba Act, or establish a system of separate or dissentient schools ‘within the meaning of subsection 3 of section 93 of the British North America Act of 1867,’ if said section 93 be found applicable to Manitoba; and if so, did the two Acts of 1890 complained of, or either of them, affect any right or privilege of the minority in such a manner that an appeal will lie thereunder to the Governor General in Council?”

The answer to that question is : Yes. In other words the question was whether the rights acquired subsequent to the union by virtue of the Separate School Act passed in 1871, and continued in force until 1890, had been interfered with so as to give cause of complaint or appeal, and their Lordships held that they had. Here the majority of the Supreme Court of Canada held that there could not be any legal complaint as to rights and privileges being taken away by competent legislative tribunal, in other words, that the legislature which had the power to confer the right had the power to take it away, and that if it were taken away complaint could not be made in the ordinary way. Instances of this are familiar. For example, if a law was passed depriving municipalities of the power of issuing liquor licenses, it would be looked upon as a very grievous matter by the present license holders, but they could not get redress except by agitation or the repeal of the law. If the present system of protection were done away with those who now enjoy the benefits of that system would be injured, but they would have no right to redress except by way of agitation to get the law restored. The Supreme Court held that the Separate School Law of 1871, being a matter which the legislature had the right to pass, they had the right to repeal it. That was held in the Barrett case, but it was also held nevertheless by the Privy Council, that the taking away, in 1890, of the rights given in 1871, did constitute a grievance which gave the minority the right to seek redress in the way that they are now doing? What I am coming to, and what I hold is, that it is perfectly plain that the course which is to be taken by this Council has not been determined by the judgment; that you are not sitting here obeying the mandate of the court; that you may hear the appeal or not, that no court has directed that you must hear the appeal, and that hearing it, no court can direct what course his Excellency the Governor General should take in the matter.

Hon. Mr. DICKEN.—Do I understand you to contend that it would have been constitutionally open to this Council to have refused to hear the appeal?

Mr. MCCARTHY.—Yes; and I am going to give you the best authority on that subject, an authority which will be accepted by this body above every other, that of Sir John Macdonald. You will remember the introduction of Mr. Blake's resolution on the subject of referring such questions as are here involved to the courts. The terms of Mr. Blake's resolutions were as follows :—

“It is expedient to provide means whereby on solemn occasions touching the exercise of the power of disallowance, or of the appellate power as to educational legislation, important questions of law or fact may be referred by the executive to a high judicial tribunal for hearing and consideration in such mode that the authorities and parties interested may be represented, and that a reasoned opinion may be obtained for the information of the executive.”

This was moved by Mr. Blake on going into the Committee of Supply and was accepted by the whole House, and the following year the Government brought down a bill embodying the object of the resolution. Mr. Blake made a careful speech explaining what he desired to effect by means of his resolution. I gather that the object was, in certain cases, instead of asking the Minister of Justice what the law upon the subject

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was—as his opinion might be open to question of being influenced by party consideration—the Council should have the power to have the opinion of a high court of law on the subject, and therefore be in a position to act upon it without danger of their proceeding being criticized upon this ground. In speaking on the subject, Sir John Macdonald said :—

“ When I first read the hon. gentleman's resolution, it occurred to me, as I daresay it occurred to many hon. gentlemen who hear me now, that it was an advance towards the American system, and proposed to transfer the responsibility of the ministry of the day to a judicial tribunal ; but on scanning the resolution in its carefully prepared terms that impression was dissipated, and I saw that the principal object of the resolution, as I read it, is that the question submitted by the Executive to the judicial tribunal should be enforced, sustained and presented to parliament, to the public and to the crown, by the fact of this legal decision having been given \* \*. Of course my hon. friend in his resolution has guarded against the supposition that such a decision is binding on the executive. It is expressly stated that such a decision is only for the information of the government. The executive is not relieved from any responsibility because of any answer being given by the tribunal. If the executive were to be relieved of any responsibility I should consider that a fatal block in the proposition of my hon. friend. I believe in responsible government ; I believe in the responsibility of the executive. But the answer of the tribunal will be simply for the information of the government. The government may dissent from that decision, and it may be their duty to do so, if they differ from the conclusion to which the court has come \* \*. I do not think that there can be any doubt as to the meaning of the motion of my hon. friend. I think it is so explicit in its terms that no questions can arise as to what its meaning is, and if there were any doubts as to its meaning—there are none in my own mind—those doubts would be removed by the illusive speech of my hon. friend.”

Hon. Mr. FOSTER.—What are you quoting from ?

Mr. MCCARTHY.—From Hansard. Now that is going, of course, a very long way. But, undoubtedly, it is sound constitutional law.

Hon. Mr. DICKEY.—You would say that this decision does decide that there is a right of appeal, but not that that appeal must be heard ? The point that struck me was that the decision gives an absolute right to somebody.

Mr. MCCARTHY.—Yes, but the question is as to working it out under our constitutional system. If this Council decides not to hear the appeal how are they to be forced to do so ?

Hon. Mr. DICKEY.—Of course there is no means of forcing that action, but there is still an absolute right on the part of somebody to appeal.

Mr. MCCARTHY.—Of course.

Hon. Mr. DICKEY.—I understand you to say that there is no correlative duty on our part to hear the appeal ?

Mr. MCCARTHY.—Yes. Somebody has the right to appeal, but we have not the duty to enforce it. I say that is going a long way, because they have obtained a solemn decision of the highest tribunal, but there is a constitutional power with this Council to say, notwithstanding the decision of a court of law upon this point, that they will not act upon that opinion. And in favour of that view, we have the opinion of Sir John Macdonald, than whom no higher authority can be quoted.

Sir CHAS. H. TUPPER.—Was not more said as to the object of the legislation providing for the reference ? Besides the object of getting advice for the Executive was there not the purpose of removing these troublesome questions from the arena of politics as much as possible ? That is the impression remaining upon my mind.

Mr. MCCARTHY.—Speaking from memory I think what Mr. Blake was driving at was that these questions were very troublesome and that whatever decision was come to with regard to them, some of those interested would say that the decision was influenced by partisan motives. That might be overcome to a greater or less extent by a reference to a judicial tribunal as to whether there was power of interference or not. If it had not been for Sir John Macdonald's speech, I should have thought that more

was intended. But no doubt it was contemplated that if reference was made and answer was given that the Council had the power to grant redress, in 99 cases out of 100 they would hardly have set up their own views against it. But I am saying that the responsibility rests here; that whatever you do you are responsible in your ordinary capacity. But that, of course, is only one question. The hearing of the application is one thing; the disposal of it is another. Now no other question was asked of the Privy Council than those I read; but there was one as to the power of the government to grant this remedial legislation, the answer to which I did not read. There may be a power and still you may decide—and I trust and believe that looking at this question in a statesmanlike manner you will decide—to leave this matter as it is. I desire to show that the decision leaves the matter for you to exercise your power without deciding the way in which you are to exercise it. Let me read what was said by their Lordships of the Privy Council in the course of the argument. You will find some pretty strong expressions used in favour of the view I present to you. In the first place, Mr. Blake, in the course of his argument—page 62—is addressed by the Lord Chancellor:—

“The question seems to me to be this: If you are right in saying that the abolition of a system of denominational education, which was created by a post-union legislation is within the 2nd section of the Manitoba act and the 3rd subsection of the other if it apply, then you say there is a case for the jurisdiction of the Governor General, and that is all we have to decide.”

And Mr. Blake replies:—

“That is all your Lordships have to decide. What remedy he shall purpose to apply is quite a different thing.”

Then Mr. Ewart at page 183, says:—

“Before closing I would like to say a word or two as to what we are seeking. As it has already been remarked, we are not asking for any declaration as to the extent of the relief to be given by the Governor General. We merely ask that it should be held that he has jurisdiction to hear our prayer, and to grant us some relief if he thinks proper to do so.”

I do not at all mean to say that Mr. Ewart is saying now to the contrary. He put it fairly upon the grounds of his clients' rights, that is upon the manner in which you think to dispose of it in accordance with the principles which regulate our system of government. I would refer you also to Lord Watson's statement at page 180. This is in the course of Mr. Ewart's argument:

“The power given of appeal to the Government, and upon request of the Governor to the Legislature of Canada, seems to be wholly discretionary in both.

“Mr. EWART.—No doubt.

“Lord WATSON.—Both in the Governor and in the Legislature.

“Mr. EWART.—Yes.”

Again at page 192, when the other side is arguing. I may explain that the point they were making, Mr. Cozens-Hardy speaking, was that subsection 2 of section 22 of the Manitoba Act had reference to subsection 1, and that it was in reference to rights in subsection 1 that the appeal was given in subsection 2, the protection given by subsection 1 being protected against infringement not only by act of Parliament but by any provincial authority, so that if the advisory school board did something regarded as objectionable there would be an appeal from the advisory board to the Governor General in Council. But their Lordships held that this was not what was meant in the section, but that subsection 2 is a substantive section. It is with reference to that that Lord Watson makes the remark:—

“It does not seem very probable *prima facie* that there should be a reference given to the Governor whether an act which this statute declares to be *ultra vires* shall be retained on the statute-book or shall be modified.”

What he means is to ask how he is to declare in favour of there being any discretion if the act is *ultra vires* under subsection 1. At page 193 Lord Watson says:

"I apprehend that the appeal to the Governor is an appeal to the Governor's discretion. It is a political administrative appeal, and not a judicial appeal in any proper sense of the term, and in the same way after he has decided the same latitude of discretion is given to the Dominion Parliament. They may legislate or not as they think fit."

Could any words be more definite or precise?

Hon. Mr. DICKEY.—Lord Watson is drawing a distinction between a judicial appeal on the question of *ultra vires* and an appeal on the other ground.

Mr. McCARTHY.—At page 258, in the course of Mr. Haldane's argument on the same point, he says :—

"I do not think it is any more technical or unsubstantial than the functions of your Lordship, who often have to declare that an act is *ultra vires*. The Governor General would give his decision.

"Lord McNAGHTEN.—We are a judicial body and he is not sitting as a judicial body."

Then at page 121, Lord Watson, speaking of the principles upon which the Governor General in Council is to decide, speaks as you will see in the following quotation :—

"Mr. HALDANE.—All we say is that your Lordships must look at the kind of Act which is complained of in order to see whether the conditions of the appeal to the Governor General have arisen.

"Lord WATSON.—I am prepared to advise the Governor General and decide on the meaning of this clause, but I am not prepared to relieve him of the duty of considering how far he ought to interfere."

Sir CHARLES HIBBERT TUPPER.—But as a matter of fact the Privy Council did go a little further than Lord Watson said he was prepared to go.

Mr. McCARTHY.—In what way?

Sir C. H. TUPPER.—May it not be argued that they did consider how far we might interfere and suggested how we might remove these grievances by pursuing a certain course?

Mr. McCARTHY.—I will not close my argument without referring to that point. In the first place it would be inoperative, and, in any case, taken altogether, I think it does not bear that meaning. There is another part in which Lord Macnaghten says that the suggestion that the Governor General in Council should be a court of appeal on matters of law is a startling one, but I do not know that I can find it at the moment.

Hon. Mr. DICKEY.—I think at page 221 you will find it.

Mr. McCARTHY.—That is what I refer to, thank you. I will read the passage :—

"The Lord CHANCELLOR.—What the judge did would be the interpretation of the law *intra vires*.

"Mr. HALDANE.—Yes.

"The Lord CHANCELLOR.—Then was the Governor General in Council to decide that the judge had misinterpreted the law?

"Mr. HALDANE.—Yes.

"The Lord CHANCELLOR.—That is rather startling?

"Lord McNAGHTEN.—A court of appeal on matters of law from the decision of a competent judge?

"Mr. HALDANE.—A court of appeal from a decision of a provincial court, which was the only court which could give judgment.

"Lord McNAGHTEN.—It is a most startling suggestion."

Now let me give you a clause to which the Minister of Justice referred a minute ago. It is at the foot of page 285. Having decided the main question, the Lord Chancellor goes on :

"For the reasons we have given their Lordships are of opinion that the 2nd subsection of section 22 of the Manitoba Act is the governing enactment and that the appeal to the Governor General in Council was admissible by virtue of that enactment, on the grounds set forth in the memorials and petitions, inasmuch as the Act of 1890 affected rights of

privileges of the Roman Catholic minority in relation to education within the meaning of that subsection."

Now we come to the point the Minister of Justice referred to:—

"The further question is submitted whether the Governor General in Council has the power to make the declarations or remedial orders asked for in the memorials or petitions, or has any other jurisdiction in the premises. Their Lordships had decided that the Governor General in Council has jurisdiction and that the appeal is well founded, but the particular course to be pursued must be determined by the authorities to whom it must be committed by the statute. It is not for this tribunal to intimate the precise steps to be taken."

He then goes on to say:—

"It is certainly not essential——

Sir CHAS. H. TUPPER.—That is what I referred to.

Mr. MCCARTHY.—"It is certainly not essential that the statutes repealed by the Act of 1890 should be re-enacted, or that the precise provisions of these statutes should again be made law. The system of education embodied in the Act of 1890 no doubt commends itself to, and adequately supplies, the wants of the great majority of the inhabitants of the province. All legitimate ground of complaint would be removed if that system were supplemented by provisions which would remove the grievance upon which the appeal is founded, and were modified as far as it might be necessary to give effect to these provisions."

No doubt it would, but the judgment does not say that you are to do it.

Hon. Mr. DICKEY.—They contemplated some action.

Mr. MCCARTHY.—But it is an *obiter*.

Sir CHAS. H. TUPPER.—I did not mention the point to refute your position as to whether we had the absolute duty to perform, but merely to point out that Lord Watson's position was not acted upon when he said that he would not give a suggestion. There is a very marked suggestion there as to what we could do, and, perhaps, as some would argue a suggestion as to what we should do.

Mr. MCCARTHY.—Possibly that observation is warranted by what Lord Herschell has said. But the question was not asked what you should do, but whether you have jurisdiction. The Privy Council, if they venture to instruct this body, were stepping beyond their jurisdiction.

Hon. Mr. CURRAN.—They said the rights of the minority had been affected?

Mr. MCCARTHY.—Yes; that is the ground of appeal; that I am not seeking to deny. The question is how it is to be redressed if redressed at all? I do not know if it is necessary to fortify my ground any further, but I will call attention to one point. If this were a judicial body I should expect to see His Excellency here. If, on the contrary, this is an ordinary matter of administration, I would not expect His Excellency to be present. In other words the Privy Council here is the same as the Cabinet in England, and in England the Cabinet sits apart from the Queen, but advises her in matters of policy. But in England when the Privy Council sits Her Majesty is present, and in the same way, if this Council is sitting as a judicial body the Governor General should be present in person. Another question is as to how remedial action is to be carried out. You will make a remedial order. I do not quite agree with my learned friend that you are to frame an Act of Parliament for the Legislature of Manitoba. Your duty would be well performed, in case remedial action was to be taken, if you passed the remedial order and left the Legislature of Manitoba to put that in the form they saw fit. That order would be an Order in Council upon the report, I suppose, of a committee or of the whole Council and approved of by the Governor General in Council in the ordinary way. Now, under our system, for such an action there must be Ministerial responsibility. With reference to that matter I would refer to Sir William R. Anson's work, "Law and Custom of the Constitution," page 43 of part 2. Then if you would look at Mr. Todd's work you would find the subject of ministerial responsibility dealt with. I refer to the work "Parliamentary Government in the British Colonies," 2nd edition prepared by Mr. Todd's son, he says:—



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"The responsibility of the local administration, for all acts of Government is absolute and unqualified. But it is essentially a responsibility to the legislature, and especially to the popular chamber thereof,—whilst the responsibility of the Governor is solely to the crown. It is indispensable to the welfare and good government of the colonies that these separate responsibilities should never be allowed to clash, and the best guarantee against the occurrence of such an event is to be found in the continued existence of the most cordial and unreserved harmony and co-operation between the Governor and his advisers."

I would cite from the same book at page 128 :

"Ministers cannot relieve themselves from the responsibility of advising as executive councillors ; nor is a Governor free to act without or against ministerial advice, in cases not involving the rights or prerogatives of the crown or imperial interests."

At page 814, he summarizes as follows :—

"The general conclusions arrived at in the preceding chapter, after a careful investigation of the several questions therein discussed, may be briefly epitomized as follows :—

"1. The position of a governor in a colony possessing representative institutions, with 'responsible government' is that of a local constitutional sovereign. Whatever other powers may be conferred upon him by the law of the particular colony, he is by virtue of his commission and instructions from the crown, the representative of the Queen in this part of her dominions, who is herself the source of all executive authority therein. He has his responsible ministers, who advise him upon all acts of executive government and in all legislative matters. The identity of aim and the mutual co-operation in endeavour which must invariably subsist between the representative of the crown and his constitutional advisers is a pledge and assurance to the people that they enjoy the full benefit and security which the monarchical system is capable of affording in our colonial system, combined with the advantages of ministerial control and responsibility."

Sir MACKENZIE BOWELL.—Your object in reading that is to show that we should be responsible politically as an executive ?

Mr. MCCARTHY.—Yes.

Sir MACKENZIE BOWELL.—We do not deny that.

Mr. MCCARTHY.—Then I need not take up further time. My object is to show that you cannot be acting judicially. If you were, it would be a monstrous thing to hold you responsible for an error in judgment. We know that judges are not and that they commit errors in judgment, otherwise there would not be the reversal of their decisions in appeal.

Sir CHARLES HIBBERT TUPPER.—You claim that we are still a political body ?

Mr. MCCARTHY.—Yes ; and it is upon political considerations the matter must be determined. After what the president has said, I need not go on with my argument by which I had intended to show that all judicial functions had been withdrawn from the crown under our system, and properly withdrawn, thus taking away a prerogative which the crown claimed to exercise. The exception to that rule is the Judicial Committee of the Privy Council. If you care to see how that was brought about you will see it referred to in the work I have mentioned, "Law and Custom of the Constitution," pages 442 and 443.

"When the Long Parliament, the Court of Star Chamber, had restrained the jurisdiction of the council, it did no more than take away the powers conferred by the statute of Henry VII., and forbid the action of council, which had extended to matters cognizable by the Courts of Common Law.

"But the King in Council was still the resort of the suitor who could not obtain justice in one of the dependencies, and the act which took away the original jurisdiction of the King in Council at home did not touch petitions from the adjacent island or the plantation."

Appeals were thus allowed from the colonies to the crown, which were dealt with by an open committee of the Privy Council, which advised the crown as to the order to be made in each case. But the Act of 1833 conferred judicial powers upon a certain

portion of the Privy Council in England, and it is upon that act that the authority of the Judicial Committee of the Privy Council rests.

Sir CHARLES HIBBERT TUPPER.—Take the case of the Railway Committee of the Privy Council, that is governed by special statute and often in connection with these cases there are thrown upon us from time to time what you would call *quasi* judicial duties, which we have to perform very much as judges would have to do, except that we are politically responsible for all the conclusions at which we arrive.

Mr. MCCARTHY.—I think that in the Railway Committee the powers are partly judicial and partly administrative and that you would not be responsible as ministers for the conclusions reached. If you were to trace that back, as I have had occasion to do, you will find that the difficulty arose in England that the judicial bodies were found utterly incompetent to adjudicate in railway disputes. The jurisdiction was first, you will remember, in the Common Pleas in England, and that was found so unsatisfactory that the jurisdiction was taken away and vested in a body and called the railway commissioners. In this country when the trouble first arose in a small way between railway companies and their customers, or between railway companies themselves, it was not thought advisable to establish a new body to deal with these matters; but the jurisdiction was not conferred upon the courts, but a committee of the Privy Council was appointed, whose jurisdiction has been from time to time enlarged, and finally, in the last Railway Act of 1889, I think——

Hon. Mr. DALY.—1888.

Mr. MCCARTHY,—these powers were much enlarged. It was thought better to enlarge the powers of the committee than to appoint railway commissioners. I should think it unfair to hold that a minister was responsible to Parliament for his decisions in that committee. There is another matter that has a bearing on this—the Minister of Agriculture had certain powers under the law relating to patents. I believe that the courts have held that the Minister of Agriculture in these matters is not acting judicially, but he exercises a *quasi* judicial function.

Hon. Mr. ANGERS.—That is transferred now to the Exchequer Court.

Mr. MCCARTHY.—I am speaking of the matter as it used to be.

Sir MACKENZIE BOWELL.—Such functions are certainly exercised in the Customs Department.

Hon. Mr. DICKEY.—How about the pardoning power?

Mr. MCCARTHY.—That is a prerogative of the Crown and must be exercised upon the responsibility of the ministers.

Hon. Mr. DICKEY.—But the function is purely judicial.

Mr. MCCARTHY.—Not purely. Take, for instance, the case of the Irish prisoners in England, for whose release many are pressing. They have been found guilty over and over again, and the Home Secretary says that they were properly convicted. But he is still urged to pardon them, upon grounds for which he will be held responsible.

Hon. Mr. DICKEY.—Would it not be difficult to make a definition of the word "judicial," which would not include such functions as that exercised by the Minister of Justice in relation to the release of prisoners? I am quite willing to accept the responsibility, but I think we should all understand that the act we perform is a judicial one.

Mr. MCCARTHY.—I think there would be the difficulty pointed out. But, in the case of the Minister of Justice, after the law has decided there still remains the question of policy which it is for him to decide.

Sir CHAS. HIBBERT TUPPER.—Would you go so far as to say that the main consideration in a matter of this kind should be the political effect of our action and not the actual merits and rights of it?

Mr. MCCARTHY.—That is undoubtedly my position. That is a duty you have to exercise. Let me crystallize it. The Privy Council have determined that there is a grievance; they have determined that there is jurisdiction in the Governor General to pass a remedial order. If that order is to be passed, *ex debito justitiæ*, there is an end of the matter. Why all this ceremony, why all this talk?

Hon. Mr. CURRAN.—It may be necessary to hear why justice should not be done. But there is a grievance.

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Mr. McCARTHY.—I am not going to say that there is not a grievance ; I am precluded from that by the judgment.

Sir CHAS. HIBBERT TUPPER.—The question that occurs to me right or wrong, is this :—Granting all you say as to our political responsibility and as to our power to do one thing or another, does not the Act, in its nature contemplate that we shall approach the question, not as a political or party body, not that we shall merely go through the form of an inquiry on the appeal made to us, but that we shall, to the best of our ability, deal with the merits of the case, being responsible, to Parliament, nevertheless, for our action on the merits.

Mr. McCARTHY.—The moment you do that, you have to see to it that you have the confidence of a party majority, for we are governed under the party system. But I have a good deal to say about that and I do not want to anticipate that part of my argument. I hope to show that you are to deal with it as a matter of policy, but not at all to say that you have not jurisdiction.

Sir CHARLES HIBBERT TUPPER.—Under your contention, we should call a party caucus when this appeal is made and see whether it would be wise to grant a remedial order or refuse it?

Mr. McCARTHY.—I will answer you in another way. Would it be said to be a matter to be dealt with judicially when one of the Council, by no means an uninfluential member, has already pledged himself that this remedy shall be granted or he will resign his seat?

Hon. Mr. OUMET.—Perhaps I may change my opinion, if you are going to give me a proper definition of what is political conscience and what is individual conscience.

Mr. McCARTHY.—You are recorded, and that in a government organ, to have said :

“ Will the Federal Government have a session or will they have a general election ? He could not give them a definite reply at this time, and he could tell them that there were many important questions under consideration and especially the question which interested all true patriots, I refer to the Manitoba school question. It was a duty that the Government owed to the electors to say what they would do in the presence of such an important question. They could not say as yet exactly what would be done. It was a constitutional question, and there had been a difficulty. Mr. Ouimet said that the Conservative leaders had been perfectly sincere in the line of conduct they had followed in the question, and it was also in conformity with the resolution as submitted to the House of Commons in 1890 by Mr. Blake himself. Mr. Ouimet said he was one of those who had demanded that justice should be given to the minority. They had taken the appeal to England at their own expense—”

I understand that he was one of the parties who subscribed money to take the appeal to England. If so his acting now in a judicial capacity would be an anomaly. My clients would be compelled to come for a decision before one who was interested in the matter.

Hon. Mr. OUMET.—We wanted to find out what the law was. That it would not be useless according to your opinion, surely, for you have said we did not know much law.

Mr. McCARTHY :—

“ They had taken the appeal to England at their own expense and they have been successful. The appeal of the minority had not only been maintained, but had been solemnly confirmed. The judgment had once for all decided that not only had the majority in Manitoba the right to have schools of their own choice, but that nobody had the right to deprive the majority of their schools.”

I have endeavoured to show that it did not decide anything of the kind

“ The course now open to the minority was to demand the re-establishment of the separate schools which they formerly enjoyed. Mr. Ouimet said that there was unanimity amongst the members of the Government on this question.”

That was before the argument.

Hon. Mr. OUMET.—Unanimity in what ?—in a determination to do justice.

Mr. McCARTHY.—“A time had been fixed for the advocate of the minority to plead their wants and to show what remedial legislation should be passed. The Cabinet would be called upon to act in accordance with the judgment of the Privy Council. As soon as the case was heard a decision will be rendered, and Mr. Ouimet added, that if that decision was not in accordance with the constitution, there would be but one thing for them to do, and that was for them to retire from the Government.”

I do not know what that means.

Sir CHARLES HIBBERT TUPPER.—You would not want him to remain in a government that had taken unconstitutional action?

Mr. McCARTHY.—He says further:

“The Government was not afraid to make known its policy and there would be no alternative before its policy would be defined. The government would go before the electors with a definite programme, and if he was a member of the government that programme would mean the perfect execution of the judgment rendered by the Privy Council.”

Hon. Mr. OUIMET—That is right.

The Council adjourned until 2.30 p.m.

#### AFTER RECESS.

The Council resumed at 2.30 p.m.

Mr. McCARTHY.—Referring, and as I trust only for a short time longer, to the point that was still under discussion when the adjournment took place, I want to point out what the position must necessarily be upon any action being taken by the Council. If the Council has no discretion at all—as to that I have said all I propose to say—of course there is no necessity of any argument or of any inquiry; the order goes as of right. If the Council has discretion, then I take it that that discretion is one which would not be justly implemented by the simple passage of a remedial order. If the Council come to the conclusion to advise His Excellency to pass a remedial order, they do in effect say to their followers, and say to the country, that they are prepared to advise Parliament to carry out that remedial order if necessary, and to support it through Parliament. That I think demonstrates that the order being made, and a party government pledges its party to its adoption by such party, so far as the party can be bound by the act of the Government—the Government is bound in honour and bound in justice to the minority who are claiming it, to see that that order is afterwards carried into law in case the province declines to obey it. Now, the moment that is done, it enters the field, indeed it has already entered the field, of Dominion politics. It has become a question as to whether it ought or ought not to be done. If it is not done, the Government take the responsibility of saying, we won't interfere; and they antagonize a certain section of the community, not merely the minority in Manitoba, but a very large and important section of the community in the Dominion. If the Government say there ought to be a remedial order passed, then they antagonize another section who differ from them; and therefore it appears to me it becomes, in every sense in which it can be viewed, a question of politics, and a question of moment to the Dominion at large, into which field of politics it has entered. I do not know that I can better put what I mean than in the language of the Hon. Mr. Pelletier, who delivered a very carefully prepared speech on this question, and who, I think, has put it, from his standpoint, in a very fair manner. He commences by saying:—

“It is time, however, for us to ask if this question should not be decided before rather than after the elections. If the elections take place before the question is settled, or before tangible measures are taken to guarantee us the settlement, the question presents itself, namely, what attitude those should take who hold before and

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above all that justice should prevail, and that the question of finance, administration, protection, or of free trade should be subordinate to the great cause we have at heart. Two political parties will ask your support. What, therefore, is the position of each party on this question?"

Then he goes on to criticize the conduct and the course of the leader of the opposition. He points out that Mr. Laurier declares that he would only settle the school question in case the schools were Protestant: that if he is entrusted with power by the electorate he will grant remedial orders; and he draws from that the conclusion, whether rightly or wrongly, that if the schools are neutral, then Mr. Laurier would not interfere.

But he comes now to the powers that be, and he says:—

"We will see now what is to be thought of the present Ottawa Government. Let me tell you, in the first place, that if Mr. Laurier is obliged to have a policy clear and defined on this question, the Government has likewise obligations and elementary responsibilities. Mr. Laurier is obliged to speak, and the Government is obliged to act, and if the Government does not do its duty, it must not be relieved of the consequences which such want of action would entail."

Further on he says:

"We, however, have not come to this in the province of Quebec, this classic land of true liberty and real grandeur; but if, on the one side, we are just, if we wish to continue to be so, we have the right to ask the same measure of justice and equity for the sections of country where our people are in the minority, and we are obliged to insist on this point independently of all political attachment and of all party interest. The Federal Government has no right to be frightened by the hydra of fanaticism; and even if it were to succumb for not having done its duty, the Ministry should not flinch before the possibility of a defeat, which would be surrounded by a veritable halo which would be more glorious than a victory obtained by trampling under foot the most sacred rights.

"Therefore, let us consider the duty of the present hour. If the Federal elections are brought on before the settlement of the school question, or before the Government gives tangible proof that the question is going to be settled, they will do no more than Mr. Laurier; they will go no further than he in thus hiding themselves behind a culpable ostentation. I am not one of those who believe that this question is one that can be settled at the wink of an eye. I am aware that there is a regular procedure to follow. I am aware that it is necessary that the interested party should plead their appeal before the Executive Council. I know that the Greenway Government must be placed *en demeure* to act, and that the Federal Government can only take action after this is done; but that which we have a right to ask is that if the dissolution of the House is to take place, it should be preceded by an effective action, engaging the Government in a formal manner. The Ministers cannot make, each in their own provinces, contradictory declarations necessitated by the exigencies of the situation. I have, however, confidence in the promises and engagements of our Ministers. I cannot forget that at a moment when, after the last decision of the Supreme Court, everybody believed the grand cause for ever lost, it was they who united on one document the names of twenty persons who undertook to pay the judicial expenses in order to take the case before the Privy Council. I know also that they paid their own money for this good cause. I know also that the twenty persons whose names are upon this historic document have paid out up to the present time the sum of \$9,000, in order that the grievances of the Manitoba minority might be taken to the foot of the throne. I know that upon this document there are the names of men who expect no political reward, the names of venerable priests who have affixed their names through a religious spirit and in the public interests. I have also confidence that Ministers who have such a splendid act as this to their credit will not come before us with false electoral promises. Individual promises, however, are not always possible to execute. What the Catholics wish is that the question may be settled by a law, if there be a session, and if there is no session, by an Order in Council, sanctioned by the representative of Her Majesty, and consequently binding on all the Ministers and on the party, and submitting the

question directly to the people. If the Government takes this course it will merit the entire confidence of the public, and if not it will be unworthy of it."

Now, I do not think that at all an unfair view from the standpoint from which Mr. Pelletier spoke. He, of course, is desirous of seeing this remedial order made, and he puts it to the Government that they should be compelled to take a stand upon the subject and declare themselves in a tangible manner before the election, and to commit themselves and their party to the passage, not merely of a remedial order, but to subsequent legislation which might follow upon it and without which, of course, it would be mere waste paper. You are not, sir, unmindful of the fact that a considerable portion of the press of the province of Quebec are clamouring for a session: they are insisting not merely that a remedial order shall be passed, but that by this present Parliament legislation should be passed. All that goes to show that this question has entered the field of politics, and can only be dealt with as any other matter of politics is to be dealt with. Let me add to my quotation from the judgment, a reference which had escaped me, and which a friend has been kind enough to point out, and which, perhaps, is even more pertinent than any I have read before. I quote from page 32 of the Order in Council under which the reference was made:—

"The remedy, therefore, which is sought is against Acts which are *intra vires* of the Provincial Legislature. His argument is also that the appeal does not ask your Excellency to interfere with any rights or powers of the legislature of Manitoba, ~~inasmuch as~~ as much as the power to legislate on the subject of education has only been conferred on that legislature with the distinct reservation that your Excellency in Council shall have power to make remedial orders against any such legislation which infringes on rights acquired after the union by any Protestant or Roman Catholic minority in relation to separate or dissentient schools. Upon the various questions which arise on those petitions, the sub-committee do not feel called upon to express an opinion."

That was your own sub-committee, composed of the late Sir John Thompson, and, I think, of the Minister of the Interior and yourself, and Mr. Chapleau.

"And so far as they are aware no opinion has been expressed on any previous occasion in this case, or any other of a like kind by your Excellency's Government, or any other government of Canada. Indeed, no application of a parallel character has been made since the establishment of the Dominion. The application comes before your Excellency in a manner differing from applications which are ordinarily made under the constitution to your Excellency in Council."

Now this is the point that was criticized.

"In the opinion of the sub-committee the application is not to be dealt with at present as a matter of political character or involving political action on the part of your Excellency's advisers."

That was the opinion of the sub-committee. Then, Mr. Blake criticized that as follows:—

"Your Lordships will observe the phrase 'at present,' on the preliminary question which is a question whether there are grounds to entertain an appeal, the committee thought they were going to act judicially, but very properly they added the words 'at present' because it is quite obvious that when they enter upon the sphere of action of entertaining an appeal, their functions must be political, of expediency and of discretion, just as much as the functions which in the last resort upon their recommendation are assigned to the Parliament of Canada itself, of course a political body.

"If the recommendation of His Excellency in Council is not obeyed by the local authorities, there devolves upon the Parliament of Canada the right to legislate to the extent that is necessary to achieve redress, warranted by the recommendation of his Excellency in Council. Both these transactions, the prior substantive transaction of deciding on the action of the Governor in Council, and the action of the Parliament in Canada, are, of course, not judicial but political."

Then there is another passage at page 26:

"THE LORD CHANCELLOR.—It is not before us what should be declared, is it?

"Mr. BLAKE.—No, what is before your Lordships is whether there is a case for appeal.

"THE LORD CHANCELLOR.—What is before us is the functions of the Governor General.

"Mr. BLAKE.—Yes, and not the methods in which he shall exercise them—not the discretion which he shall use, but whether a case has arisen on these facts on which he has jurisdiction to intervene. That is all that is before your Lordships."

Now there is a well known rule that if a court of law goes beyond what is necessary for the decision of a case, the decision is not binding, it is what is called *obiter*. They have no more right to affect the interests or rights of parties by going beyond the question itself, than a mere stranger has. The court is limited in its decision, and this has a binding character only so long as it is confined to the questions which were submitted. For these reasons, therefore, I submit with confidence, that this question does not come before you as one settled and determined by anything the Privy Council has said; that this question does not come before you to be dealt with judicially, and you are not sitting here judicially; that this question does not come before you to be disposed of as any other question which comes before the Council, and on which the Council has to advise the Governor, upon the responsibility of the Council, as the ministers of the Government, and upon their responsibility to Parliament and to the people whom Parliament represents. Now that being so—as I will assume, for the sake of my further argument, that it is so—what is the question? Perhaps, however, before I come to that, I might as well clear up those other small matters which have been introduced into the argument, and then I will not have to interrupt the course of the discussion by any irrelevant observations further on. I refer to the suggestion—the argument, as my learned friend calls it—that when the Legislative Council was abolished in Manitoba the minority in that province had the pledge of the majority that their rights would not be interfered with. Now let us see what took place. My learned friend has referred you to two or three passages to be found in his book from speeches made by Mr. Davis, who was then premier, by Mr. Norquay, and I think by Mr. Luxton. I may have to say a word about these speeches, though I hardly think they are of sufficient consequence to justify me in taking up your time, but I want to point out to you the account we get of the abolition of the Legislative Council in Mr. Begg's volume. From that book I gather that Mr. Davis came to power, pledged to the abolition of the Legislative Council, that he first attempted to carry that out, and a bill passed through the Lower Chamber, but in the Upper Chamber it was rejected, the Legislative Council refusing to be a party to its own abolition.

Hon. Mr. MONTAGUE.—There is no record of that.

Mr. MCCARTHY.—I find that here on page 197 of the second volume of Begg's history. What I have not seen is the statement that he pledged himself, but I assume that he gave a pledge. Then the history goes on to state:—

"About this time also, at the request of Hon. Alexander Mackenzie, a delegation from the Local Government, composed of Hon. R. A. Davis and Hon. Joseph Royal, visited Ottawa in reference to obtaining better terms for the province. The result of this mission was a readjustment of the financial relations between the Dominion and the province, by which the subsidy of the latter was increased, until 1881, to \$90,000, per annum; and in addition, a number of accounts standing between the Federal and Provincial Governments were satisfactorily adjusted, practically wiping out a debt of \$120,000, which Manitoba owed the Dominion, and leaving the province with a clean sheet to continue anew on its increased subsidy."

I refer to that because I noticed with surprise that Mr. Blake said in his argument before the Privy Council that he had to do with the abolition of the Senate. Mr. Haldane, not having known of the change, was speaking of the two Houses, and Mr. Blake said, one House; and then, upon some conversation taking place, he said he had to do with the abolition.

Sir MACKENZIE BOWELL.—It was on the advice of Mr. Mackenzie and his government.

Mr. MCCARTHY.—Yes. Then the book goes on to say:—

"On January 18th, 1876, the second session of the second Parliament of Manitoba was opened, and the most important measure passed was the abolition of the Legislative Council. The bill, as it will be remembered, had been defeated at the previous session by the casting vote of the Speaker, Hon. J. H. O'Donell, but on the present occasion the government prepared for an emergency of this kind, by arranging beforehand with a majority of the members comprising the Council to vote themselves out of office. The vote in the Council for abolition stood as follows: Hon. Messrs. MacKay, Inkster, Guinn, and Ogletree voted for it, and Hon. Messrs. Hamelin, Dauphinais and O'Donell against it."

So the whole number voted either for or against, the French members voting against it, and the four gentlemen bearing English and Scotch names, having been provided for in advance, voted for the abolition of the Legislative Council. It is not pretended that there was any bargain or arrangement made by any person who had authority, that on account of that vote, or notwithstanding that, the rights guaranteed to the French minority should be preserved. But I will only use this argument: Is it possible for any gentleman, even for the First Minister, or for any other member, to pledge a legislative body, and if so, for how long? They may speak for themselves, but they have no right to pledge posterity. They have no right to speak for anybody else but themselves, and they have no power to bind the legislature in any way. But, I think, if you read the language which has been cited to you by my learned friend, of Mr. Davis, Mr. Luxton and Mr. Norquay, you will find that what they were speaking of and thinking of, was not the separate school question at all, but it was the French language. I think it was a year later when the question arose as to the abolition of the separate school system, and so far as I know, and so far as I can gather from my investigation of history, there had been nothing said at all after this, nothing said in the press about changing the school system. So I submit that, looking at the facts as I could get them, the province wanted to get an increased indemnity, and the Dominion authorities said, Before we give you more money we want to see that you are not going to waste it on this legislative council. Under these circumstances, it would be carrying any statement that might be made by these gentlemen, a great length, to pretend that they could bind either Protestants, or Catholics, or anybody else. They had no mandate to make any promise as to what they might do, either on behalf of that Parliament or any subsequent Parliament. Then, I am instructed to-day by the Attorney General, and that is all I propose to say about it—that the alleged agreement between Mr. Greenway and the Archbishop has been repeatedly denied. I am not denying it now, but it has been repeatedly denied, and I gather from the statement read yesterday that it had been denied. Then, as to these statements that are alleged to have been made at St. François Xavier by Mr. Joseph Martin,—I do not know whether they have been denied or not—but if Mr. Joseph Martin or any other member of the Manitoba Legislature made any such statements, they had no authority to bind the Liberal party. The Liberal party at that time had a platform in which there was nothing said one way or the other as to the question of schools, or the question of language; and if these gentlemen did in that constituency make any such statement, they could only speak for themselves. They were not authorized or justified in any way to speak on behalf of the Liberal party of whom they were representatives on that occasion. I think Mr. Greenway's statement was denied, and the other statements, if made, were certainly not statements which the party felt that they were bound by in the slightest degree. Now, then, coming to the question of abolition. Without troubling you with extracts from the book of the Privy Council, let me summarize the views of their Lordships, which I fully adopt for the purposes of my argument. It was stated over and over again to the counsel who were arguing, and I think admitted by them, and it seems to me to be the only possible view that can be taken of this jurisdiction, that the power to deal with schools was given to the provinces; that power is said to be exclusive in the first section:—

"In and for the provinces the legislature may exclusively make laws in relation to education."



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That, if stated alone, would give them absolute and unqualified power. But it does not stand alone; it says:—

“Subject and according to the following provisions:”—

The first limitation of that power is to be found in that subsection which the Privy Council have determined has no meaning, because there were no facts to which it was to be applied. Then, they were not to make any school law which would prejudicially affect any rights or privileges with respect to denominational schools which any class of persons, not merely Roman Catholics, or Protestants, but any class of persons, Church of England, Methodists or Presbyterians, had at the time of union. It has been found now, as a fact, and announced as a settled judgment of law, that there were no rights or privileges which any class of persons enjoyed prior to the union, and therefore, that might as well be written out of the section. It cannot be of any application so far as one can see at present, but it has been held, and this is a further limitation, that if a right or privilege which the minority enjoyed after the union is taken away by the acts of the legislature, there may be, under these circumstances, jurisdiction in the Parliament of Canada to pass a law to remedy that grievance; so that in that event the power is for a time concurrent in both legislatures. Up to the time of the complaint being made to the Governor in Council, the power is absolute and unlimited, section one being eliminated, in the legislature of the province. From the time that the jurisdiction of the Governor in Council is invoked and the time the remedial order is passed, the province still has the power, and still remains with the power from the time that order is disobeyed. If that event should happen, and we have reason to know from what was said at the opening the other day that that event is likely to happen, then there would be concurrent legislative powers until the Parliament of Canada exercised its legislative power. I think Sir John Thompson spoke of it in his speech as parallel legislative power. I do not know whether my expression or his is the happier, but I think you understand what I mean; in other words, the legislature of Manitoba might, this session, refuse to pass remedial legislation, and then there would be authority, in the Parliament of Canada to pass it, and until the Parliament of Canada passes it, there would still be power in the legislature to pass it. They might repent and pass it the next session if they please, or even the same session. They might not deal with the matter until this Parliament dealt with it. So that this power and authority, which I understand you may, under certain circumstances, exercise, is a power and authority which, under the events which have happened, may arise, and if it does arise, it is a legislative authority to be exercised like any of the other legislative authorities conferred by section 91 of the B. N. A. Act. Speaking generally with regard to the scope of the constitution, we know that the powers conferred by the legislation are absolute and sovereign, that is, when they act within their jurisdiction, and subject, of course, to the veto, which we are all subject to. The legislative acts by the Governor General in Council and the Parliamentary Acts of this Parliament are only subject to the Queen in Council, and subject to that, their authority is absolute. There is no over-lapping. The single exception, I think, is in the matter of agriculture. There is an absolute jurisdiction in the one or in the other, and where they act within their jurisdiction, they are sovereign. But this jurisdiction may be, as I pointed out, for a time concurrent; but the moment the Canadian Parliament act, the authority passes away from the local for all time; and as I pointed out to you, the Dominion authority have an opportunity of repealing its own legislation. What I want now to point out is this: that this being a legislative power, conferred under these circumstances, and existing under these circumstances in the Parliament of Canada, it has to be exercised just as any other power would be. The Government are now bound, for instance, to come down with a bill; the Government, in matters of this moment, would be bound, after passing a remedial order, to come down with a bill and carry that order into effect. What I ask now is, there being with regard to this province, under these circumstances, a right in this Government—because if the Government refuses to act, and thinks it is wiser to leave the province to manage her own affairs, then, of course, the question can never arise—but there being the right in this Government to set this jurisdiction in motion,

what considerations should actuate the Government, before they come to an affirmative conclusion and grant the prayer of the petition which has been presented here? What are you asked to do? It is impossible to disguise it from ourselves after the draft-bill which has been submitted to you as the demand of the minority—you are asked to pass a separate school law for the province of Manitoba. You are asked to repeal their Public School Act to that extent. The two cannot stand together; and with all deference be it said, it shows how little the Lord Chancellor understood the question when he seemed to think that an act to supplement an act of this kind, might be passed without interfering with the Public School Act. This Public School Act, of course, stands now as a general law throughout the province. The proposed legislation would enable a neighbourhood of Roman Catholics to take themselves out from under the control of the public school law, and to bring themselves within the control of the separate school enactment. The Parliament of Canada, at the instance of the Government of Canada, is to be asked, and is now being asked, to change the school law of the province and to establish a system of separate schools in that province.

Hon. Mr. HAGGART.—Are we for ever invested with that authority? Could we repeal that?

Mr. MCCARTHY.—I think not. I think this is legislation *ad hoc*. The moment you exercise this power, you have nothing more to do with it in Parliament, except in case you have made a mistake and have not gone far enough. But as for repealing it, I think it is gone.

Sir ADOLPHE CARON.—You could not restrict the power, but you could extend it.

Mr. MCCARTHY.—I do not think you can go further. The Governor sanctiont whatever remedial order he thinks Parliament can carry out. But suppose Parliament fails to carry out to the full extent the remedial order at one session, they might the next session, so as to make effective the Governor General's order. But once they do that, so far as I have been able to understand the Act, there would be no power to repeal, certainly not in the local, certainly not in the Dominion, because it is legislation *ad hoc* for that purpose, and that is what we call the execution of a power. Now, I say with all earnestness, that this is a matter that must be carefully considered. Here you act in this hasty manner. I do not intend to make any disrespectful allusion, but the judgment had hardly reached the province of Manitoba, before the Ministers of that province have had time to consider its effects and to weigh the arguments which are to be found in it, and the new position which is created by it, when they are called upon to appear here, as it were to defend their system, which, when you have heard this history, you will find has not been hastily adopted by them, but has been deliberately adopted, and still more deliberately adhered to. Now, the Parliament of Canada has no right to interfere in schools, in educational matters, which, of all others, it will be admitted, are purely local concerns. There is an observation of one of the law lords that education is a purely local concern. At page 218 Lord Watson says:—"It is a matter purely local." In that matter purely local, you are called upon now, not merely to override, but to coerce a great province of the Dominion, in respect to a system which this province has in its wisdom adopted; and if I were seized, as I ought to be, as fully as the Attorney General is, who has charge of this matter in the province, of the merits, and all the arguments, and the reason which induced the Government to adopt, and which induced the people to support, the public school system, I think I would be able to give you a very good reason why the people thought fit to abolish separate schools and to adopt the public school system. Let me point out to you in the first place that you have to determine, and according to my learned friend's view, you have got to determine it as an abstract proposition, that the separate school system is to be preferred to the public school system. In my learned friend's whole contention there is not one circumstance that he has given you as to the condition of the province when the public school system was adopted. He tells us that there is a minority, as there are in all the provinces, of either Catholics or Protestants, and that there is a jurisdiction, which is not now in question. He has told you what the separate system of schools is, he has given you arguments in favour of that system. I join issue with him at once, and I ask you to look at it as he presents it. He says that because the separate school system is to be preferred, you should pass this remedial order.

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I say that the separate school system is not to be preferred, that you should not therefore pass this remedial order. I say that that would be a proper conclusion to come to if the matter were open and unembarrassed by the decision that the province has arrived at; but it is still more impossible to arrive at that conclusion, when you are sitting in appeal upon an act of the legislature, unless you have more than the simple fact that one is separate and one is public. Now there is not a gentleman sitting in the Council who has not made up his mind on the merits of the two systems. The question is not new to us here. I do not think there is a man in public life that has not a definite view upon that question. Therefore, it does appear to me to be a waste of your valuable time for me to argue in favour of the public school system as against the separate school system. I should never convince those who believe in separate schools as the proper system, and I do not need to convince those who do not. I believe there are men sitting at that board, who, if they have not changed their opinion lately, are as firmly convinced that separate schools are against the interests of the people of this country, as the humble individual who now addresses you. So that it is not necessary for me to go into that question, and to tell you that separate schools are contrary to our system in this country, where no religion is recognized by the law, where we have no state religion, if you except the province of Quebec, where there is a *quasi* state church—where we have no state religion, and where all religions are open, and free, and equal before the law. I say that under these circumstances it is not necessary to repeat the stale and hackneyed argument which has been presented so frequently, and which you all know so well, that the state ought not to lend its assistance to the propagation of the dogmas of any particular religion or of any particular church. According to our theory, the state owes to its people the gift of elementary education. Those who have no children have to bear their taxes as well as those who have. Those who choose to send their children to a private school have nevertheless to bear their taxes, although they get no benefit therefrom. The state itself, in the interests of the public at large, has decided that the children of the people should be educated, and to enforce their education and insist upon it, they not merely provide means, but they make attendance at school compulsory. Now, if the system of separate schools is to be preferred, and if this Council concludes that it is better to adopt that as its view, I do not think that any argument I can present will affect that result. I am only here to protest in the name of the Government of Manitoba against the adoption of that principle. But I think I can point out to this Honourable Council that no affirmative decision can be arrived at in this case, without this Council laying down the proposition that of the two systems, the separate and national, they prefer the separate system. Now, in this matter, you are legislating not for this Dominion. This will be a local law. You remember that in the old days laws were frequently passed to affect merely Upper or Lower Canada. We had two systems of jurisdiction, as it were, although the Parliament was one. This is a law which will affect merely the province of Manitoba, and affect it in a matter of purely local concern. It can only be passed, I submit, by the Council after having arrived at the conclusion that as between the separate school system and the public or national system, the separate school system is preferable; and not only that, but you restore the separate system which has been abolished. I say there are no circumstances affecting Manitoba which make it an exception to the general rule. A man might say: Well, speaking generally, the separate school system is not to be preferred, the public school system is better, but looking at the peculiar circumstances of the province of Manitoba, that forms an exception. But I think I shall be able to establish, by facts which you have not yet heard, that there are no exceptional circumstances which require that the school system should be separate.

Hon. Mr. OUMET.—Would it be asking too much of you to give us a definition of what constitutes national or public schools, and separate schools, in your opinion?

Mr. McCARTHY.—I intended to do that.

Sir MACKENZIE BOWELL.—Do you mean in your argument to say that if a man refused to vote for the abolition of separate schools, he would necessarily approve of separate schools?

Mr. McCARTHY.—You have no power to abolish them in Ontario, and there is no use in voting if you have not the power.

Sir MACKENZIE BOWELL.—We know they have not the power, but the question has been raised.

Mr. MCCARTHY.—Yes, I think I was one of those who raised it, but in view of petitioning the Imperial Parliament, and only in that sense. No person ever dreamed of attempting to vote for the repeal of separate schools in Ontario at present.

Sir MACKENZIE BOWELL.—Do you mean that any person refusing to sign that petition, would prefer separate schools?

Mr. MCCARTHY.—A law affecting any of our provinces ought not to be interfered with unless the legislative body of that province has asked for its repeal, and consequently, unless this Parliament has concurred; in other words, the Imperial Parliament would not interfere with the British North America Act, unless, for instance, the Ontario Legislature asked for the repeal of the clause which imposed separate schools upon that province, and the Parliament of Canada coincided with that request. The only question that arises here is, is it wise, is it proper, to set on foot an agitation with a view of electing gentlemen to the Legislative Assembly who would adopt that petition?

Sir MACKENZIE BOWELL.—Then those who would vote against that proposition would affirm the principle of separate schools, according to your argument.

Mr. MCCARTHY.—Not necessarily. I leave things as they are. We have got the public school system in Manitoba, and the question is, is this Council going to re-establish separate schools? My argument is that they cannot re-establish separate schools unless they are convinced that the separate school system is preferable to the public school system, or a national school system, as to which I promised the Minister of Public Works that I would give a definition before I am done.

Sir CHARLES H. TUPPER.—The Privy Council make a reference to what was actually contemplated by this Parliament at the time of the passage of that Act, that is to say, they take it that it was practically certain there would be a separate school system there, as the parties were equally balanced, as they put it.

Mr. MCCARTHY.—That is what gave rise to the jurisdiction.

Sir CHARLES H. TUPPER.—I would say that is a declaration on the part of the Canadian Parliament providing for that contingency, and in favour of that system of separate schools.

Mr. MCCARTHY.—What the Canadian Parliament has provided for is what the Canadian Parliament has said. But what they said was that if they intended to accomplish anything by the first section, they utterly failed to do so.

Sir MACKENZIE BOWELL.—It often occurs that the intention of Parliament is not carried out by the wording of the Act.

Mr. MCCARTHY.—Lord Herschel has expressed the same opinion. I think the draftsman who drew up this particular legislation was not very well versed in the business.

Sir CHARLES H. TUPPER.—The parliament who originally passed that Act contemplated and endorsed a system of separate schools for Manitoba, just as we would be doing by a remedial order of this kind, for protecting that system would be endorsing it.

Mr. MCCARTHY.—That may or may not be so. It is quite evident, I think, from the absence of a provision as to separate schools, that parliament did not think fit at the time to say that there should be separate schools. Nothing would have been simpler than for parliament to have enacted that in the province of Manitoba there shall be separate schools, just as this parliament has more than once provided with regard to the North-west. That could have been done, and that would have been simple.

Sir MACKENZIE BOWELL.—There is no declaration in the British North America Act, because at that time the province of Manitoba did not exist.

Hon. Mr. IVES.—If your view as to our declaring in favour of separate schools, if this remedial order is given, is correct, then you would hold that the question upon which the appeal is based, is this: the Catholics say common schools or national schools are the law, but we think separate schools would be preferable, and we ask you to give us separate schools. Now, I do not understand that to be the petition at all. They say: We have a right to separate schools, we have been deprived of that right, and we want them restored.

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Mr. McCARTHY.—I understand that, but I am done with part of the question. I pointed out that they are saying they have a right to the separate schools.

Hon. Mr. IVES.—I understood you to say that anybody who favoured referring the matter to Parliament, must necessarily declare in favour of separate schools.

Mr. McCARTHY.—No, I say this Council cannot come to the conclusion to give this remedial order for separate schools without putting as your major premise that you approve of separate schools as against national schools.

Sir MACKENZIE BOWELL.—It is to that declaration that I take objection.

Mr. McCARTHY.—I am not asking you to give judgment in my favour on the spot. All I am asking you to do is to listen to me.

Sir MACKENZIE BOWELL.—I will endeavour to do so.

Mr. McCARTHY.—I do not mean to say that you have not a perfect right to object to it.

Sir CHARLES H. TUPPER.—Do you object to my interposing the question with reference to the decision, to which I wished to call your attention, at the time the Manitoba Act was passed. On page 276, in the judgment of the Privy Council, I read this—

“These who were stipulating for the provisions of section 22 as a condition of the union, and those who gave their legislative assent to the act by which it was brought about, had in view the perils then apprehended. The immediate adoption by the legislature of an educational system obnoxious either to Catholics or Protestants, would not be contemplated as possible. As has been already stated, the Roman Catholics in the province were about equal in number. It was impossible at that time for either party to obtain legislative sanction to a scheme of education obnoxious to the other. The establishment of a system of public education in which both parties would concur was probably then in immediate prospect. The legislature of Manitoba first met on 15th March, 1871. On the 3rd of May following, the Educational Act of 1871 received the royal assent, but the future was uncertain. Either Roman Catholics or Protestants might become the preponderating power in the legislature, and it might be under such conditions for the minority to prevent the creation of the public cost of schools which though acceptable to the majority could only be taken advantage of by the minority of the terms of sacrificing their cherished convictions. The change to a Roman Catholic system of public schools would have been regarded with as much distaste by the Protestants of the province as the change to an unsectarian system was by the Catholics.”

Mr. McCARTHY.—That, of course, is not law, it is merely a historical reference. Of course, that is an endeavour on the part of the Lord Chancellor to find a reason for this extraordinary legislation. It may be ~~in~~ wrong, but it does not bind anybody.

Hon. Mr. DICKEY.—I understand you to say that in your view that section of the Manitoba Act should not, under any circumstances, be given effect to.

Mr. McCARTHY.—That is my view, speaking here on behalf of the province of Manitoba. Speaking elsewhere, I should say it should never have been invoked in any province at all. Circumstances, of course, change very much, and what might have been thought feasible in 1871 is impossible in 1895. It does not follow that because there is power, it ought to be exercised, any more than because there is power to expend public money, it should be expended. Now, let me draw your attention to the fact that every province of the Dominion that has been free, has deliberately adopted the public school system. This is a circumstance that is not lightly to be disregarded in view of this appeal to the central body. We know that in New Brunswick the public school system has been adopted. Early after confederation the province passed a public school law, and you are all familiar with the struggle that was made against that law, and the attempt that was made to induce the central body here to veto it. But the New Brunswick law remains to this day a public school act. I do not know whether Nova Scotia preceded or followed New Brunswick in her legislation in this respect, but she, too, has a public school act. Prince Edward Island followed, and there again there was a struggle. Petitions were presented, questions debated, and the future rendered dismal by the possibilities that were conjured up if the law was not repealed. Let me quote the language in the report of the Executive Council of Prince Edward Island:—

"The great principle that the public money was not to be appropriated for the purpose of teaching sectarian dogma or creeds, is one which a large majority of the people of this province value very highly, and which they will not surrender without a struggle commensurate to the importance they attach to the principle itself."

Then we have British Columbia adopting a public school system. Now, all of us who come from Ontario, know that there is a great deal of unrest by reason of the limited authority that the legislature of that great province has to deal with the subject of schools; and I venture to say, as a proof of the evil of that kind of interference, that there is more disquietude, there is more heart-burning, there is more bitterness in the province to-day on account of the restriction on the legislature in that respect, and the compulsory adoption of separate schools in the constitution, than there is in any other province in the Dominion. In the provinces that are free, we are told, and it is the best possible argument that can be urged, that so tolerant are the majority, so willing are they to yield rights which could not be legally claimed, that, to adopt the language of my learned friend, we wink at infractions of the public school law so that it becomes almost a separate school system. And they do it willingly. But it is one thing to compel people to do a thing, and it is another thing to leave it to their free choice. It is a strong argument in favour of allowing the people of Manitoba to work out their own salvation without interference.

Hon. Mr. COSTIGAN.—You speak of excitement in Ontario about their being compelled to retain separate schools. Would that apply to Quebec also, as the same condition of things exists there?

Mr. McCARTHY.—I am not so familiar with the politics of Quebec, therefore I am not speaking of it. I was comparing Ontario with the other English provinces of which I have more knowledge. I do not desire to include the province of Quebec in that category. On this question I am disposed to adopt the arguments of Dr. J. M. King, in a lecture which I find reproduced in Mr. Ewart's compilation. It is only a repetition of what has been said in favour of a national school system as against a separate school system, and giving objections to the latter system. If you will look at pages 189 to 193 in Mr. Ewart's book on the Manitoba school question, you will find Dr. King's arguments reproduced. I will read a summary of them:—

"First, it is in direct violation of the principle of the separation of church and state. It is unnecessary, indeed it would be quite irrelevant to argue this principle here. It is that on which, rightly or wrongly, the state with us is constituted. I do not understand it to mean that the state may not have regard to religious considerations, such as it shows when it enforces the observance of the Sabbath rest, or that it may not employ religious considerations, such as it shows when it enforces the observance of the Sabbath rest, or that it may not employ religious sanctions, as it does when, in its courts of law, it administers an oath in the name of God; but I do understand it to mean that the state is neither to give material aid to the operations of the church in any of its branches, nor to interfere with its liberties."

Mr. DICKEY.—That would include exemptions from taxation.

Mr. McCARTHY.—Yes, it does. The Baptists have gone the length of saying that they are willing to give up exemptions. Then he points out what, of course, we know:—

"Now, when the right of taxation, and in addition, grants of money are given by the state to schools, in which distinctive doctrines and rites of any church, whether Protestant or Catholic, are taught, schools which, while giving instruction in secular branches are used at the same time to extend the influence, if not to increase the membership of that church, then the principle of the separation of church and state is violated almost as much as if the officiating minister or priest were taken into the pay of the state, and the violation (I say it with all frankness, but without any feeling of hostility to any class), is not more easily borne, than it is mainly in the interest of a single section of the church. The public school is surely meant to be the school of the state by which it is supported. It does not exist to initiate the youth of the province into the details of Christian doctrine, or to prepare them for communion. Its main, if not indeed its sole aim is to make good citizens; intelligent, capable, law-abiding citizens. But under our present system, schools exist and are maintained by the state which are church schools in everything but in name, which are in fact, proselytising

agencies. Their establishment in the early history of the province is an inconsistency which is not, perhaps, difficult to explain, but their perpetuation can scarcely fail to be felt by the majority of the inhabitants as a misappropriation of public funds and an injustice to a large section of the community."

Then, he argues next that the system of separate or sectarian schools operates injuriously on the well-being of the state, and that argument I have endeavoured to adopt in the strongest possible way. I do not think anything can be more mischievous to that community, in which we all ought to be interested, than the perpetuation from its early history of a system dividing the people into antagonistic and positively hostile bands, on account of their religious faith. Dr. King goes on to say :—

"It occasions a line of cleavage in society, the highest interests of which demands that it should, as far as possible, be one. It perpetuates distinctions, and almost necessarily gives rise to sentiments which are at once a reproach and a peril. I do not think the religious differences between the Roman Catholic and the Protestant churches, small or unimportant. As a Protestant, sincerely and firmly believing our faith to be more scriptural, I could not wish these differences to be thought of little account, but surely it is possible for the one party and the other to maintain steadfastly their respective beliefs without cherishing sentiments of distrust and hostility to the manifest injury of the public weal."

He adds at page 191 :

"The system itself of separate or sectarian schools appears to be incapable of justification on any ground of right principle or even of wise experience. I do not expect to see any permanent contentment in relation to the question while the system is maintained. The conviction will continue to be deeply and generally cherished, that the equities of the situation have been disregarded, and that the interests of the state have been sacrificed to meet the requirements of the Church of Rome."

Further down at page 192, he says :—

"The claims of our French speaking Roman Catholic brethren should be fairly and, if possible, even generously considered. They were early in this western land. They have done much and at great cost—cost not of money only, but of toil and suffering from the native races. But this claim—the claim to teach the distinctive doctrines and rites of their church in schools sustained by public moneys—is one, I have no hesitation in saying, and as entertaining much regard for some among us by whom it is made, I say it with regret, which the state ought not to concede, should not feel itself at liberty to concede. It is a privilege which, under the system proposed, is not granted to any other church. No other desires to have the opportunity to teach the distinctive doctrines of Presbyterianism, or Methodism, or even of Protestantism, in the public schools, or if any cherish such a wish, it would be very properly denied them. There is no room therefore to speak of injustice to a class who happen to be in the minority, when exactly the same privileges are granted to them which are granted to other classes of the community. If it is a matter of conscience with the Roman Catholic Church (it is obviously not with all its members) that the whole body of the faith as held by it, should be taught even to the youth in attendance on school and in the day school. I see nothing else for it than that they should establish and support from voluntary contributions, the schools in which such teaching is to be given. But it were surely far better that our Roman Catholic fellow citizens should unite with us in securing a distinct recognition of our common Christianity within the public schools, leaving what is distinctive, and what many on the one side and on the other feel to be very important, to be taught to the children in the Sabbath school, or in the church, or better still, in the home."

Hon. Mr. OUIMET.—How do you explain the principle that it is unjust that public money should be used for the religious education of the people? I suppose because it is not fair that the Presbyterians, for instance, should be taxed to educate the Baptists or any other sects?

Mr. McCARTHY.—The clergymen of my church are anxious for separate schools.

Hon. Mr. OUIMET.—I do not know why they should not have them.

Mr. McCARTHY.—Then you break up the whole system.

Sir MACKENZIE BOWELL.—In Ontario, under certain circumstances, if there are a sufficient number of Church of England people living in a neighbourhood where the majority are Roman Catholics, they can form a separate school.

Mr. McCARTHY.—A Protestant school, but not a Church of England school. The Archbishop of Manitoba, who is an Aberdeen man, I believe, is very much imbued with the principles which prevail in England, where they are fighting strenuously for church schools. Where there is an established church, church schools would be logical, but in this country there is no established church, and you remember well the long struggle we had with regard to the clergy reserves, which was owing in fact to the jealous and hostile feeling that existed in the other Protestant denominations, as well as in the Catholic denomination, against the public lands of the province being used for the support of Church of England schools, although they had been set apart to the Church of England and the Church of Scotland, by King George III.

Sir MACKENZIE BOWELL.—I remember that when I was a boy writing for a newspaper, I used to write against the secularization of the Clergy Reserves.

Mr. McCARTHY.—I can say that on that question I never changed my opinion, because from my boyhood I was in favour of the secularization of the clergy reserves.

Sir MACKENZIE BOWELL.—You are a church man and I was not.

Mr. McCARTHY.—I am satisfied, speaking as a churchman, that my church has been better off and enjoyed a higher position in the ranks of her fellow churches, because she stands alone and has no unfair privileges over her sister churches, as she had when she used those lands which were set apart by King George for her benefit. Now, let us look at this question as regards the province of Manitoba. Remember you are asked now to set in motion machinery by which a local law can be made for Manitoba, and by which separate schools may be given to Manitoba. If that is to be given simply as a matter of right, and because at one period there were separate schools there, then there is no argument about it. If that is to be given on consideration of advantages or disadvantages, of expediency, or in expediency, or of the wisdom of the measure as applied to that province,—and I humbly submit those are considerations which should prevail,—then you must take into account the circumstances of the province, and if you are in favour of separate schools, see whether it does not form an exception; and if you are against separate schools, conclude simply that there is no reason why they should be imposed on that province.

Hon. Mr. IVES.—Is it your opinion that the school Act of 1871, in so far as it created separate schools for the Roman Catholics, has become, by the interpretation that has been given it by the Privy Council, a part of the constitution of Manitoba?

Mr. McCARTHY.—No, clearly not.

Hon. Mr. IVES.—You do not take that view.

Mr. McCARTHY.—Clearly not. They hold that the act of 1890 was not a good law; they hold that because the act of 1890 took away privileges which the Roman Catholic minority had by the School Act of 1871, that therefore they had a right to come here and complain, and call upon you to give them that school law back again. So, if you do not interfere, the Act of 1890 remains effective law.

Hon. Mr. HAGGART.—Is there any limitation to the remedy that we may order?

Mr. McCARTHY.—I suppose, judging by an expression that fell from one of their Lordships, it would be merely to restore rights that had been taken away.

Hon. Mr. HAGGART.—Suppose we made changes in excess of the old law, what would be the effect?

Mr. McCARTHY.—That might be investigated in the courts, every law is subject to that. That was not understood when this Act was passed in 1871, and probably that gave rise to this extraordinary question, because it was not recognized that laws could be declared *ultra vires* by the court. That was well understood on the American side where they have a paper constitution, but we had not a paper constitution, and no law was declared *ultra vires* until after Confederation, and after the passage of this Act. That would be a reason, probably, why this appeal was given to the Governor in Council. Now, let me remind you that this change in the law was not made hastily. I am glad to find in this history of Mr. Begg that within a short time after the law, in 1871, the question was raised, not by politicians, but by the people. On page 201 he says:—



"An agitation now commenced in the province on the school question and the following is the platform that was set down by a portion of the Protestant section of the community :

- 1st. The abolition of the board of education, and the creation of a department of education with a cabinet Minister for a head.
- 2nd. The establishment of a purely non-sectarian system of public schools.
- 3rd. The compulsory use of English text books in all public schools.
- 4th. All public schools to be subject to the same rules and regulations.
- 5th. The appointment of one or more inspectors.
- 6th. The establishment, as soon as practicable, of a training school for teachers."

I need not trouble you with reading the rest. You will see what was afterwards embodied in the act of 1890. Now that was there in 1876, 5 years after the separate schools had been introduced. A section of the people commenced to agitate for a repeal of the separate school law, which they did not succeed in carrying out until 1890, 14 years after, so it cannot be said that the matter has been done hastily. Let me read you an extract from Mr. Hill's history also, to show that the question was up in the legislature long before it was treated as a government measure. At page 601, in Hill's History of Manitoba, he says:—

"Shortly afterwards John Norquay became Minister of Public Works, and Dr. Baird, Speaker of the House. The first session was naturally a long one, and all its members zealous. The government invited amendments to their measures, which were cheerfully furnished, and committees, after spending a month on a Queen's Bench and School Act, were ruthlessly awakened up at the close of the session, to find that the government had only done this as a blind, and passed their own bills over the heads of those who desired so much different. The Opposition were worsted, and their ideas of public schools buried—not however, for ever, as the session for 1890 has shown."

Now, Mr. Norquay was Minister of Public Works during the days when Mr. Archibald was Lieutenant-Governor of the province.

Hon. Mr. DICKEY.—He was appointed in 1874, and served two terms.

Mr. MCCARTHY.—At all events, this shows that it was not a hasty act on their part.

Hon. Mr. DALY.—Have you anything to show that there was any agitation between the period that quotation refers to, and 1889?

Mr. MCCARTHY.—No, I have not. The question was first raised in 1876. This history states that the agitation was kept up, but it was not adopted by any political party.

Hon. Mr. DALY.—I never heard of that.

Mr. MCCARTHY.—Now Dr. Bryce, who was a member of the school board, and speaking therefore with knowledge, has written an article on the Manitoba School Question, which was published in the Canadian Magazine and also on page 283 of Mr. Ewart's book:—

"In conclusion the writer is of opinion that the people of Manitoba have followed a wiser and more patriotic course than that suggested by Mr. Ewart, with his lax and unphilosophic plans of so-called toleration. The problem facing Manitoba was unique. The province was made up of people of many nations, its speech is polyglot, with the majority English-speaking: it has eight or ten thousand Icelanders, it has fifteen thousand German-speaking Mennonites; it has some ten or twelve thousand French-speaking half-breeds and Quebecers; it has considerable numbers of Polish Jews; it has many Hungarians and Finlanders; it has a Gaelic-speaking Crofter settlement. The Icelanders petitioned the education board, of which the writer is a member, for liberty to have the Lutherans prepare their candidates for confirmation in the school; the Mennonites, with singular tenacity, have demanded separate religious schools."

I do not know what their religion is.

Hon. Mr. DALY.—It is the Lutheran religion.

Mr. MCCARTHY.—Now, you will see it becomes a very important matter. Here were fifteen thousand people who were demanding separate religious schools, who had never come into the school system, and declined to come into it. Remember that at

that time there was no power to tax, so that a man who was neither a Protestant or a Catholic, was exempt from taxation, and the Mennonites notwithstanding all the inducements, steadfastly refused to come into the school system, demanding that they should have separate religious schools. Mr. Bryce goes on:—

"The French had their Catholic schools, and their spirit may be seen when their late superintendent, Senator Bernier, refused to consent to a Protestant being a member of a French Canadian society. Many of the other foreigners are absolutely careless about education. What could patriotic Manitobans do?—They were faced with the prospect of whole masses of the population growing up illiterate. The Mennonites who came from Russia are more ignorant to-day as a people than when they came from Russia 18 years ago. Yes, British Manitoba has been a better foster-mother of ignorance than half-civilized Russia had been. The only hope for the province was to fall back on the essential rights of the province, and provide one public school for every locality and have a vigorous effort made to rear up a homogeneous Canadian people. It has required nerve on the part of the people to do this, but the first step has been taken, and in the mind of most there is the conviction that the battle has been won."

Now, just bear that in mind when you come to deal with the question as it otherwise presents itself. It was not merely a question between the English speaking majority and the French Canadians, or Roman Catholic minority. That was not the only difficulty that beset the Manitoba Legislature. They had all these various bodies of foreigners which had been induced to settle in the country, and who are, so far as I know, making good citizens, and therefore their settlement is to be encouraged. The legislature had the education of these people and these difficulties to look after, and in addition, the difficulties with which we in the older provinces are familiar, and to which I need not more particularly advert. Then, let me say something on the question of population, because it is impossible to disregard the question of majority. The minority does not rule, according to our system. The minority is not to be deprived of rights, but the ordinary way for the minority to obtain their rights is by agitation, and by appealing to what I think can always be appealed to where rights are invaded, and that is the good sense and fair-mindedness of the majority, no matter of whom that majority may be composed. That is our system, be it right or be it wrong. Now let us see how that stands here. In the first place, who does my learned friend appear for? Looking at the record I find none of the French names on the petition that is presented here, and for whom my learned friend appears. Looking at the petition, page 20 of the case that was referred to the Privy Council, the names are, His Grace the Archbishop of St. Boniface, the Bishop of d'Anemour, Joseph Messier, Priest of St. Boniface; T. A. Bernier, J. Dubuc, L. A. Prudhomme, M. A. Girard, A. A. LaRivière, M.P., James E. Prendergast, M.P.P., Roger Marion, M.P.P., and four thousand other names. On page 24 the members of the Executive Committee of the National Congress are all French names. Then the third one, which is on page 31, contains also the same French names. The petitioners that appear on this document are not those whose names I find upon the face of the petition. These people—I say it with no disrespect, because they have rights, no matter where they live—the most of them live in the one district of Provencher in which the bulk of the French people are settled.

Hon. Mr. OUMET.—It is one of your grounds for objecting because they are only Frenchmen.

Mr. McCARTHY.—That would be a good ground, but it is not the ground I am putting forward here. I mention these things because we had here a representative of the Irish Catholics, who came on behalf of himself and those who sympathize with him.

Hon. Mr. CURRAN.—Has he any credentials of any kind?

Mr. McCARTHY.—You have heard what he said yesterday. I do not represent him in any sense. He told you yesterday that he was a public school trustee, that he was a member of the Roman Catholic Church, and in full communion with the church, and as such he has a right to be heard, I suppose, just as much as even a Frenchman.

Hon. Mr. ANGERS.—And he told us his two daughters were teaching.

Mr. McCARTHY.—Now, I say it is significant in this regard, that if the proportion of Catholics, small in itself, is yet to be cut down by any considerable number of them who are satisfied with the system, it reduces, in my opinion, the ground upon which the minority might claim indulgence, because it is an indulgence, at the hands of this Council. Now, let me deal with the question of population, but, first, I may draw the attention of the Council to this fact. At the time, Manitoba was set apart as a province, the population was said to be 12,000. Of these, 5,000 were French half-breeds, 5,000 were Scotch half-breeds, and 2,000 were what were called Canadians in those days, or whites in the older provinces. The population of the Red River settlement in 1870 was composed of about 2,000 whites, 5,000 English half-breeds and 5,000 French half-breeds, or Métis. There was another division into 3 parts, English, French and Canadians. There was a cross division into three parties, viz., the English, the French and the Canadians. Here is a citation from Begg's history, describing the population at that time:

"The French half-breed, called also Métis, and formerly Bois-Brulé, is an athletic, rather good-looking, lively, excitable, easy going being. Fond of a fast pony, fond of merry making, free-hearted, open-handed, yet indolent and improvident, he is a marked feature of border life. Being excitable, he can be roused to acts of revenge, of bravery and daring. The Métis, if a friend, is true, and cannot in too many ways oblige you. Louis Riel was undoubtedly the embodiment of the spirit of unrest and insubordination in his race."

Then he says of the English half-breeds:—

"As different as is the patient roadster from the wild mustang, is the English-speaking half-breed from the Métis."

So apparently the population included five thousand of the wild mustang and five thousand of the patient roadster. And the Canadians were two thousand pioneers who had gone into the country at that early day. Now these twelve thousand people passed a separate school law and if they had not done so the schools Act of 1890, which is now in question, would not have been passed, and this question could not have arisen until a separate school law had been passed. Gentlemen forget that the complaint is that because these ten thousand half-breeds chose to pass a separate school law the 150,000 or 200,000 people,—I believe that is about the estimate of the population of Manitoba now,—who are not the least intelligent of the sons of the older provinces, must never pass a law to alter that.

Sir MACKENZIE BOWELL.—Were these five thousand English half-breeds all Protestants?

Mr. McCARTHY.—No; some were Catholics.

Hon. Mr. DALY.—They were not all half-breeds, I fancy, but included other natives—the Selkirk colonists.

Mr. McCARTHY.—I do not pretend to know. But Mr. Ewart quoted that and used it in the Privy Council as a correct statement. I believe you quoted from Begg?

Mr. EWART.—Yes.

Mr. McCARTHY.—I understood that some of the English half-breeds were Catholics, and so that majority was obtained. It is trifling almost with the free people of Manitoba to tell them that because 10,000 half-breeds passed a separate school law in 1871 the province was for ever bound down to that system. Now according to the last census there was a population in Manitoba of 152,506, of whom 20,571 were Roman Catholics.

Hon. Mr. IVES.—Before you leave that point, as the Roman Catholic population was very small and confined to Provencher the disturbance would be relatively very small if a separate school system were in force.

Mr. McCARTHY.—If you were to pass a remedial law for Provencher?

Hon. Mr. IVES.—I mean so long as the Roman Catholic population is comparatively small and confined to one part of the province the disturbance caused by a separate school system would be much less than it would be in Ontario, where the Catholics are scattered all over the province.

Mr. McCARTHY.—Of course, that necessarily follows.

Hon. Mr. OUIMET.—Remedial legislation would apply only to a small minority.

Mr. McCARTHY.—Of course, you can do that if you like, I suppose. Your remedial legislation might be only for a district. So long as you do not grant too much in excess you can grant anything less you see fit.

Hon. Mr. OUIMET.—This legislation would not concern the majority in any way?

Mr. McCARTHY.—That depends upon what you call concerning them. If the majority are concerned in having the Catholics identified with themselves, if they are concerned in having these Catholics cease to be French and English.

Hon. Mr. OUIMET.—Would that be the object?

Mr. McCARTHY.—Undoubtedly, I think that would be a great object, and I think the object.

Hon. Mr. OUIMET.—That they may cease to remain French and Catholic.

Mr. McCARTHY.—Let them remain Catholic but not French. That is the object—as Mr. Bryce stated it—to make the people homogeneous. In the one district of Provencher you have 9,896 Catholics, or nearly half the Catholics in the whole province. Leaving Provencher out of the question you have a population of 131,000 Protestants and 11,000 Catholics, or ninety-one to nine. And this great province with its 64,000 square miles—and let me call attention to the fact that this is larger by 14,000 square miles than New Brunswick, Nova Scotia and Prince Edward Island taken together, this province undoubtedly is destined to be one of the greatest provinces in the Dominion and already a great factor in the wealth of the Dominion, is the subject to be dealt with. And it seems to me that you assume a great responsibility if you interfere with laws that the local legislature have adopted. I have taken up the census and I find that it is only in the following census subdistricts that there are more than 200 Roman Catholics leaving Provencher for the moment out of the question:—

Lisgar.—Assiniboia, 390; Belcourt, 826; St. Francis Xavier, 699; St. Laurent, 989.

Marquette.—Elm River, 267; Portage la Prairie, 211; Riding Mountain, 243; Rosedale, 336.

Selkirk.—Brandon City, 201; Bremda, 209; Lorne, 1,180; Sifton, 500.

So that we have here but twelve out of seventy-three districts in which there are more Catholics than 200 outside this one constituency (for Dominion purposes) of Provencher.

Hon. Mr. DALY.—That must be the census of 1881. There was no municipality of Bremda in 1891.

Mr. McCARTHY.—It may be a mistake in the name. But I took the figures down and directed them to be copied; but even if the name is wrong the numbers are right. Look at the population of the province as it has grown. I take it first as to the number of Catholics and next as to the number of French. We are told that in 1871 there were 12,000 people, of whom the minority were Catholics. In 1881 the total population was 65,954, of whom 12,246 were Catholics, or about eighteen per cent.

Hon. Mr. OUIMET.—But they had grown 10 per cent.

Mr. McCARTHY.—But the other had grown ten hundred per cent.

Hon. Mr. OUIMET.—From immigration.

Mr. McCARTHY.—In 1885 the population had grown to 108,640, of whom 14,431, or 13 per cent, were Roman Catholics. In 1891 the population was 152,500, Catholics 20,571 or 13 per cent. If you take the French separate from the Roman Catholics you will find this result:—In 1871 the French were 41 per cent, that is assuming that my learned friend's figures are correct. In 1891 there were 9,949, being 15 per cent of the population. In the census of 1885 for the first time there were separate columns for the enumeration for Half-breeds and French, showing 6,821—Quebeckers I suppose they would be called—and 4,869 Half-breeds, in all 11,190, or ten per cent. In 1891 the number was 11,102, or 7 per cent. So that the Roman Catholic population was 20,000, of whom 11,000 were French, most of them in one district, as to whom the system enforced—I fancy I am not mistaking it—was practically the Quebec system of schools, the French language being taught by teachers who did not understand the English language. There were 15,000 Mennonites, speaking their own tongue, demanding a separate system of schools, and as far as I can see, with just as much right to

have the public money appropriated to their schools as the French. There was a large body of Icelanders, with whom there seems to have been difficulty according to the passage I have read from Mr. Bryce. Other elements were coming in to fill up the province. The desire of the Provincial Legislature was to do away with illiteracy among the people, to make the people Manitobans and Canadians, not French or Mennonites, not Poles or Polish Jews. And so this system of schools was adopted. Was that unwise so that it should be over-ruled, and replaced with a system inimical to the public interest?

Hon. Mr. DICKEY.—If you are through with the figures respecting the French, may I ask if, with regard to the Mennonites, Poles and so on, you agree with the intimation of the Privy Council that no rights for them are established under this judgment?

Mr. McCARTHY.—Of course; I am only dealing with the question of schools.

Hon. Mr. DICKEY.—Arguing it on the grounds of expediency?

Mr. McCARTHY.—Yes.

Hon. Mr. DICKEY.—Do you admit that these minorities are in a different position?

Mr. McCARTHY.—Yes; they have no right to come here and complain—there is no doubt about that. I wish to say, and it cannot be too often repeated, that in the distribution of legislative powers between the Dominion and the provinces the subject of education is assigned to the provinces, and that for wise and good reason. The fact that this body is invested with power to over-rule and to impose a law upon the province, does not preclude the Council from consideration what would be the wisest and best for the people of Manitoba. You are not, I hope, going to restrain or degrade the province of Manitoba to satisfy the province of Quebec? You are dealing with the rights of the people under legislative authority given you for the benefit of the people to be governed and not for the benefit of anybody else. Therefore, it becomes a very serious matter as it appears to me, when you are asked to repeal a law that has been solemnly adopted. I desire to recall to your recollection a case of dealing with the power of disallowance on the question of education. I wish to fortify my position with reference to the earlier records. The reports and the history will show that everything there was against any interference with the question of education. How was it that the parliamentary majority made up at one time of those on one side of the House and at another time of those on the other side of the House, expressed themselves as opposed to interfering with a law regulating education. Some, perhaps, will say that it was because of a dislike to interfere with provincial rights, but that will not answer, at all events, completely; because men in public life, who had no scruple at all upon the abstract question of provincial rights joined in these resolutions, and none more heartily than the president himself (Sir Mackenzie Bowell), against any interference with the subject of education. Was it that the subject was felt to be a delicate one to interfere in? Was it that the matter was so purely one of local concern? I will only give you the facts and allow you, gentlemen, who are as competent as I am and more so, to draw a proper deduction. The Minister of Marine and Fisheries brought this question up in 1872 and pressed it forward. His resolution you will find at page 35 of the Journals of 1872.

Sir MACKENZIE BOWELL.—That is the New Brunswick case.

Mr. McCARTHY.—Yes.

Sir CHARLES HIBBERT TUPPER.—It came up several sessions.

Mr. McCARTHY.—Yes; I am going to trace the resolutions to show the deliberation with which the matter was handled, and that, notwithstanding the strong regret expressed by the majority in Parliament that the law had been passed, yet a tremendous majority thought it best not to interfere.

Sir MACKENZIE BOWELL.—That refers to a province in which they had neither by law nor usage any rights in separate schools.

Mr. McCARTHY.—It dealt with a case in which the province had the right to pass the law.

Sir CHARLES HIBBERT TUPPER.—There had been no separate schools at any time.

Mr. McCARTHY.—At that time it was a disputed point whether the rights of Roman Catholics had been interfered with. It was settled by the Privy Council afterwards that the Act was not a violation of the terms of the British North America Act.

Sir MACKENZIE BOWELL.—But here you are dealing with a case in which the Privy Council says that rights have been interfered with.

Mr. McCARTHY.—I am going to try and apply the case I give.

Hon. Mr. COSTIGAN.—If you quote the resolution to show the strong feeling of parliament and the delicacy felt in dealing with the rights of the provinces, you should also, before you leave it, refer to the vote of 1873.

Mr. McCARTHY.—I am going to. At this time Sir John Macdonald's government was in power, of which government you were a supporter. I am going to show it was received then and also to show that it was disposed of when Mr. Mackenzie was in power.

If there is no chance of my getting through perhaps this will be a convenient place to break off.

The Council adjourned until 11 a.m. to-morrow.

OTTAWA, March 6, 1895.

The Privy Council met at 11 o'clock a.m.

*Present*:—Sir Mackenzie Bowell, Sir Adolphe Caron, Hon. Mr. Costigan, Sir Charles Hibbert Tupper, Hon. Mr. Foster, Hon. Mr. Haggart, Hon. Mr. Ouimet, Hon. Mr. Daly, Hon. Mr. Angers, Hon. Mr. Ives, and Hon. Mr. Dickey.

Mr. McCARTHY.—I find that the Minister of the Interior was in error in saying that there was not a census sub-district of Brenda in his constituency, Selkirk. I do not know whether it still exists under that name, but you will find in the census from which I took the figures which I quoted, that there is a census sub-district known as Brenda.

Hon. Mr. DALY.—There was a place of that name.

Mr. McCARTHY.—I mean that it was in the census as I gave it when I quoted the figures, showing the number of Roman Catholics in the several districts in which they numbered over 200.

Hon. Mr. DALY.—The reason I raised the question about it was that the municipality has been wiped out and I did not know but that you were quoting from the census before 1891, when the municipality existed.

Mr. McCARTHY.—I do not know whether these census sub-districts are intended to be municipalities or not.

Hon. Mr. DALY.—They are.

Mr. McCARTHY.—Then, of course, that adds to the force of my contention. If these are municipalities, you will see how impossible it would be for 200 people, scattered over a large township, to organize for the formation of schools of any efficiency. I gave you the different sub-districts, 12 out of 73, which have more than 200 Roman Catholic population.

Hon. Mr. DALY.—You must make a distinction between townships and municipalities. A township has only 36 sections.

Mr. McCARTHY.—What size is a municipality?

Hon. Mr. DALY.—Some have six townships and some nine.

Mr. McCARTHY.—That makes it still larger and still adds to the force of my argument.

Sir MACKENZIE BOWELL.—May not this be a village?

Mr. McCARTHY.—When there is a village it is quoted as such. For instance Morden is a village and is so marked; Virden is a village and it is so marked.

Mr. McCARTHY.—Mr. President, if you will permit me to retrace my steps a little, I think, upon reflection, that I can take a course which will shorten my argument and avoid repetition to a certain extent. I had partly dealt with the system of education and

had endeavoured to point out that the first question for the consideration of this board, —if I may be allowed to apply to this Council the name which is applied to the Judicial Committee—is the general question of separate as against national schools. I am not going to weary you with a repetition of what I said yesterday upon that point. I was asked by the Minister of Public Works (Hon. Mr. Ouimet) and promised to give to-day a definition of what I meant by national schools, and it is perhaps as fitting that I should give that now as at any other stage of the discussion. When I spoke of national schools I meant schools common to and enforceable upon the whole people. That would be a national system of education, and it might possibly be combined with a denominational system if the people were all agreed. Of course that can practically never be in this country; we can never have national schools, which are at the same time denominational schools. Applying my observations to the purpose before us I meant a system of national schools which can reasonably and fairly be accepted by the people as a whole, and I will submit that a non-sectarian or even a secular system if that was thought preferable, might be dealt with and treated as a system of national education. Contrasted with that is the system including what were known as separate schools, but what were in reality nothing more or less than church schools—Roman Catholic church schools. They are called separate schools, because that was the term used in connection with the agitation raised in the province of Ontario, but, as a matter of fact, they are church schools. We know that in England—or perhaps we do not know, but we might know, the fact being public—that there are church schools in existence belonging to the State Church, which had been in existence as parish or church schools long before Mr. Forster introduced his Educational Act, and which were connected more or less directly with the educational system of the country. But it is impossible for us to base our system upon that of England, because there there is a State Church which we know is attacked by a very large proportion of the population, and upon which the present government are now opening an attack in the principality of Wales, where the church is, perhaps less defensible upon any ground than amongst English people, because there the great majority belong to what are called dissenting bodies and not to the State Church. So that you have here the contrast practically between the system adopted in Manitoba—because I am quite willing to accept that as an example of national schools under the non-sectarian system of education on the one hand, with the church school system on the other hand. So that if you will understand me as speaking of a national system of schools as meaning a non-sectarian system of schools, such as we have in Ontario and Manitoba—because they are practically identical—and if you will understand the system that is contended for by my learned friend as a separate or church school system, I think there can be no difficulty in our following the different lines of thought which these systems suggest. Now, in addition to what I said with reference to the benefit flowing from the national system of schools, a school system that is accepted by the bulk of the people and which is fairly open to all the people, I think that if you will consult the educational statistics of the world you will find that illiteracy prevails in those countries where church schools are the rule and that there is a freedom from illiteracy where the schools are separate from and not under the control of the Church, but under the control of the State and carried on upon non-sectarian lines. I invite the attention of the board to that statement—I think it will be found throughout the continent of Europe that those countries where the Church have most control—take Italy for example—illiteracy is far more prevalent (the disproportion is in some cases enormous) than it is in Protestant states, not because one is Protestant and the other is Catholic, but because in the Protestant states, speaking generally, the system of education is national, non-sectarian or secular as it may be; the chief object of education in the other countries being not education but the teaching of the doctrines and tenets of their religion. So that any legislative body that has been charged with the responsibility of determining whether the schools should be national or church schools has been compelled to reach the conclusion that national schools are the better of the two. I invite your attention to the system of schools in Switzerland, and also to the system in Belgium, where, although the great majority of the people are Roman Catholics, the schools are non-sectarian or secular. In Italy you will find that the result of their school system was to leave the people in a hopeless state of ignorance until the

late change. Relatively you will find the same thing in Ireland as compared with Scotland or England. I will lay before you a few statistics which I have not had time to verify myself, but which have been compiled with care and which I believe to be reliable. These figures, I think, will show that my observations are warranted by the facts.

Sir CHAS. HIBBERT TUPPER.—Is your view based at all upon the extent of religion taught in the schools or upon the fact of religion being taught at all?

Mr. MCCARTHY.—It is not based upon the question of religion being taught at all, but upon the result of church teaching as distinguished from secular teaching.

Sir CHAS. HIBBERT TUPPER.—So your observations are not directed to any form of religion?

Mr. MCCARTHY.—I do not desire to speak in disrespectful terms of any form of religion. That has not been my practice hitherto, and I certainly shall not adopt that rule in speaking here for the province of Manitoba.

Sir CHAS. HIBBERT TUPPER.—I hope that my question did not suggest that. But let me follow it with a further question: Do you approve of banishing all religion from the schools?

Mr. MCCARTHY.—Speaking for myself, of course I do not.

Sir CHAS. HIBBERT TUPPER.—But speaking as in this argument?

Mr. MCCARTHY.—I understand that the province of Manitoba does not approve of banishing religion from the schools, that the great majority of the people of Manitoba think that the schools ought not be secular.

Sir CHAS. HIBBERT TUPPER.—So it is a question of the extent to which religion is introduced?

Mr. MCCARTHY.—A question of extent as you say, but also a question whether that ought to be regulated and managed by the State or regulated and managed by the Church. There are the two antagonistic systems, and the question is which is the most beneficial in achieving the object which the State has in view, the education of the people. The State is not concerned in the teaching of any form of religion, but it is concerned in making capable and intelligent citizens, and in giving them sufficient education to attain that result.

Hon. Mr. DICKEY.—What do you think are the guarantees in the state school of the greater efficiency?

Mr. MCCARTHY.—I cannot tell you. I have not been able to devote time to that subject and during this argument I have regretted that the province had not time to send an educationist who could speak as an expert in these matters. I only speak of results. I cannot give the reasons for the results, but I find it universally the case that in schools that are under control of the Church, the people are not educated so well or so generally as in those countries in which the schools are wholly under State control.

Hon. Mr. DICKEY.—Do these statistics that you quote show in any way the degree or extent of control or inspection?

Mr. MCCARTHY.—No, you have to study the system itself for that. If you take the statistics I have here you will find the results they show to be very striking indeed.

Hon. Mr. OUMET.—According to your own knowledge or any opinion that you may have, is the system which now prevails in Manitoba wholly secular?

Mr. MCCARTHY.—No.

Hon. Mr. OUMET.—What kind of religious teaching is given?

Mr. MCCARTHY.—I am going to deal with that. My learned friend did deal with it and it will be my duty to attempt to remove the misapprehension which might follow what he said.

Hon. Mr. OUMET.—I think you indicated a belief that no public money ought to be paid for the propagation of any religious dogma.

Mr. MCCARTHY.—That is the distinction; if you will pardon me. What the people of Manitoba say is that they are not justified in paying for the propagation of the Methodist faith as it differs from the Presbyterian or Roman Catholic; they are not justified in spreading the doctrines of the Presbyterian church, the Church of England, or any other; but, as God is believed in by the great majority of the people of this



country, as there are some principles common in great degree to all the churches—of course the agnostics would differ wholly, the Jews cannot accept our religion, and so on—but so far as religious truth is held in common by the great bulk of the people, we will permit a form of prayer which can be used by all or nearly all. But even this is done with the safeguard of a conscience clause which permits any parent who objects to any form of religious exercise to withdraw his child while that exercise is being engaged in. Your view, if I may be permitted to say so,—of course I have no means of knowing it otherwise than it has been publicly expressed—is that the teaching of your own religion, that is the Roman Catholic faith, in schools supported by public money, is quite justified. But, if so, the Presbyterians would have a right to demand a separate school in the same way for the teaching of his religion, the same with my own church, the same with the Methodist, and so on. But if all our exclusive rights are acknowledged in that way it is impossible that a separate school system can exist, and therefore, we must forego the observance of our extreme rights and agree upon something common to us all, and what I hope to establish before I am done is that the Roman Catholics have shown by experience and practice they can and do accept the system now prevailing in Manitoba, and that they can and do accept it in preference to their own system, the educational facilities being better than in the church schools. I will show that that is the practical result, and I may say that that is a result authorized by His Holiness of Rome himself. So that the attempt of this minority in Manitoba who oppose this system is to be more Catholic than the Pope. Now to give you the figures to which I refer. As I say, they were not compiled by myself, but I have taken them on the assurance of the Attorney General, whom I represent, that they have been compiled with care and are to be relied upon:—

“The census of the United States for 1880 showed that out of its total population over 10 years of age only 9·4 per cent were unable to write. In Victoria, in 1881, 92½ per cent of the population fifteen years of age and over could both read and write, and only 3½ per cent were entirely illiterate. In England during the year 1890 only 7·2 per cent of the males and 8·3 per cent of the females signed by mark in the marriage register. In Scotland only 4·30 of the males and 7·38 of the females signed by mark in the marriage register in 1889. These are countries where Roman Catholicism and its methods of instruction are not in the ascendant. Turn but for a moment and glance at the illiteracy prevalent in countries where Roman Catholics are numerous and more or less supreme. While in Scotland, in 1886, out of a total vote polled of 447,588, only 7,708 were illiterate, in Ireland, in the same years, out of a total vote polled of 450,906, 98,404, or about 14 times as many of the voters in proportion were unable to read or write. In Italy, where the Roman Catholics had 51 Archbishops, 223 Bishops, 53,263 churches and chapels, 76,560 parish priests and 28,991 religious persons to help enlighten the people, no less than 53·89 per cent of the males and 72·93 per cent of the females were, in the year 1881, unable to read and write. In Spain, where Roman Catholicism is the established religion and Protestants dare not proclaim a church service—”

That is hardly true now, for you will remember that Lord Plunkett attempted to establish a branch of the Church of Ireland and created a great deal of trouble by it—

“—where there were in 1884, 32,435 priests, 14,592 nuns, 78,564 churches, and 1,684 monks, 30·64 per cent of the males and 41·37 per cent of the females were not even able to read when the census was taken in 1887. In Portugal and its islands, where the state religion is Roman Catholicism and the Protestants do not exceed 500 in number, the number of illiterate inhabitants in 1878 was 3,851,774, or 82 per cent of the total population including children. All the above figures and many more of like interest may be found in the Stateman's Year Book of 1892 and cannot be successfully challenged.”

Let me add to that the statement that these separate schools in the province of Manitoba—I am speaking now of the year 1890 when the Act abolishing the separate school system was passed—were nothing more or less than French schools. They are so spoken of to this day. The teaching was wholly in the French language, and according to Mr. O'Donohue's statement which you heard yesterday, the French teachers—with perhaps such exceptions as would merely prove the rule—did not understand a word of

English. The same difficulty therefore presented itself to the people of Manitoba that four or five years ago aroused this province as it has not been aroused for many years, that of a system of French schools which, contrary to the School Act were being used in the county adjoining the province of Quebec. In order to meet that difficulty, as you are aware, Sir Oliver Mowat's government ordered an inspection and afterwards adopted a bilingual series by which it was hoped that English would be gradually introduced, because it is utterly impossible that a Frenchman, who does not understand a word of English, can teach children in the English tongue. That, whether successful or not, is the attempt made in the province of Ontario to deal with the problem presented by the overflow of the French speaking people of the province of Quebec into the neighbouring counties of Ontario. Now let us see, judging from our own statistics, what has been the result in the province of Quebec of their system of teaching. I quote from the last Statistical Year Book of 1893. I beg you to look at the table at page 168, where you will find proof that the province of Quebec, whose system of teaching was in partial operation in the province of Manitoba, appears to be in every respect the lowest among the provinces in the scale of education. This table is prepared by official authority. The first are the figures showing the relative standing of the provinces as to children under ten years of age able to read. In that respect the standard of the province of Quebec is the lowest. Prince Edward Island is first, Ontario second, Nova Scotia third, Manitoba fourth, New Brunswick fifth, the North-west Territories sixth, and Quebec seventh. In the table relating to children between ten and twenty years of age able to read, Ontario is first, Manitoba second, Prince Edward Island third, Nova Scotia fourth, New Brunswick fifth, the North-west Territories sixth, and Quebec seventh. I need not trouble you with all these, but generally I may say that Quebec stands seventh in the list in every one of these tabulated statements except two—the table showing the proportion of females between ten and twenty able to read, and that showing the proportion of females between ten and twenty able to write—and in these Quebec is number six, being above the North-west Territories, but below all the other provinces. So we see that the system which partially prevailed in the province of Manitoba, but which has been changed by the legislature, which was properly charged with the management of educational affairs, is demonstrated to be the most inefficient that exists throughout all the provinces of Canada. Now, if this Council is of the opinion—for I do not know what the opinion of the Council may be, though I may have a shrewd suspicion, but not as appearing on behalf of the province of Manitoba—that a system of national schools is a proper one, I trust they will allow that system to continue in force in this case. I do not say that it might not be possible, notwithstanding that national schools are better as shown by the results we have than church schools, that the church system might be better for the province of Manitoba. Such a thing is possible, but if you are of that opinion, I would like to know upon what ground you are going to carry that opinion to the extent of directing—because your order will be an order from the Queen's representative—the province of Manitoba to change its school law. If you agree that, as a general thing, separate or church schools are not so efficient in promoting education as public schools, then, before you can order a change in Manitoba, you must be satisfied that there is something in the province of Manitoba which makes it an exception to the general rule. I venture to think, with all respect, that the facts which I gave you yesterday concerning the province, instead of pointing it out as an exception to the general rule, mark it out as a locality in which a national system of schools, once established, ought not to be interfered with by this Council. One point with reference to that. You may say:—This would be all very well if this matter came before us unfettered by any local condition and if we felt free to advise the Crown as to what would be best for the people of Manitoba. We might then say we would not interfere with the system of education established. But we feel ourselves hampered, cribbed—cabined and confined if you please—by the terms of the 22nd section of the Manitoba Act and must look at this not so much with a view to deciding what would be beneficial as with a view of saving the susceptibilities of the minority who, perhaps, have a right, after a fashion, to expect a different state of things. Now I do not know whether I made my meaning clear yesterday, but I endeavoured to say that the subject of education has been given over to

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provincial control in Manitoba as in the other provinces and that all that has been given to this Council or to His Excellency the Governor General in Council is, in case a system of separate schools duly established were afterwards abolished to hear the petition of those who felt themselves aggrieved and to act upon it if you thought it advisable. But in hearing that appeal you should put yourselves in the position of the legislature of Manitoba and look at the statement from their standpoint. There is nothing to show that this action on the part of the legislature of the province has been actuated by bigotry. There is not a word that has been cited, there is not a word that can be cited, to show that their action has not been *bonâ fide* and designed to establish the system which according to their best opinion would be most in the interest of the whole province. There has been no desire to wrong this minority, small as it may be, French as it may be; the desire has been to promote the interest and welfare of the people of the province as a whole. And these considerations are just as pertinent to the advisers of His Excellency as they were to the representatives of the people of the province. The people of the province had this duty cast upon them in the first place, and, while there is a technical right in the minority to come here and have the opinions of the majority revised and their acts over-ruled, you can only over-rule them just as a higher court over-rules the judgment of a lower—upon consideration of the case itself. You must have before your mind consideration of the position of the province itself and decide the case on that ground, and not to gratify the feelings of the people in any other province, as I said yesterday. You must do what is best for the people of the province of Manitoba.

Hon. Mr. OUIMET.—As between parties in an ordinary court, would you say that the Court of Appeal was bound to do what was best for both parties or to stick to the law?

Mr. McCARTHY.—They must stick to the law; I don't think there is any doubt of that. But what I have pointed out to you, and I am glad that my learned friend here has agreed in that, is that your decision is to be given upon the merits of the case. The law as it has been interpreted by the Privy Council is that you have a right to consider the case; but there is no law providing what you shall do. You are perfectly free, and before you over-rule the action of the province, you must come to the conclusion that on the merits of the case the province is wrong.

Hon. Mr. OUIMET.—Have we not to come to a conclusion as to the minority? Have we not to consider their rights?

Mr. McCARTHY.—No; as I pointed out yesterday if that was the only question there would be no object in coming here to argue the case. The position that the Minister of Public Works (Hon. Mr. Ouimet) takes is that if the system of separate schools is established in Manitoba it must remain for all time. But that is not the law. The law is that the separate school system having been established, the abolition of it so affects the minority that, under the law, they have a right to appeal to the Governor General in Council and ask him to make an order to re-establish the system if he thinks fit, and then the Parliament of Canada will have jurisdiction to deal with his order.

Hon. Mr. CURRAN.—Then we are not bound by the constitutional rights at all?

Mr. McCARTHY.—I am quite willing to answer my friend if I can make my meaning any plainer, but I do not know that I can do so. You are bound by the constitution—I have endeavoured to say so. But I have also endeavoured to say that the constitution does not say that if separate schools are established they must remain. It provides that if separate schools are established and then abolished, those who feel that they are prejudiced by that abolition may come to this Council and ask for a consideration of their case.

Hon. Mr. CURRAN.—And for the maintenance of their constitutional rights.

Mr. McCARTHY.—There is no constitutional right about it.

Sir CHARLES HIBBERT TUPPER.—I understood your argument to cover the idea that that clause in the constitution ought not to be there and that, though it is there, it ought not to be acted upon—I mean the clause under which the appeal is made.

Mr. McCARTHY.—I do not mean it in that sense. You are acting in this matter and what I have contended is that you are bound to act according to good sense and judgment.

Sir CHARLES HIBBERT TUPPER.—And that no remedial order ought to be given?

Mr. MCCARTHY.—Just so.

Sir CHARLES HIBBERT TUPPER.—Under any circumstances—as I understand it.

Mr. MCCARTHY.—That is a pretty big proposition. I do not think that it would be necessary for me to show that under no conceivable circumstances should such a thing be done. But I will say that no events in our history that I know of would justify interference in such a case as this.

Sir CHARLES HIBBERT TUPPER.—Your position would be the same if the large majority were Roman Catholic and that majority were to bring in a system objectionable to the Protestants—you would resist any remedial action?

Mr. MCCARTHY.—So long, as in the case of Manitoba, there was a conscience clause.

Sir CHARLES HIBBERT TUPPER.—Then it would depend upon circumstances?

Mr. MCCARTHY.—This law could not have been passed if, in the judgment of the Privy Council, the legislature had established Protestant schools. The Barrett case in that event would have been decided the other way. If the Act put those who did not attend the schools in any unfavourable position, if it provided that no child should be eligible for promotion in the public service or for appointment in the public service unless he could produce a certificate of attendance at the public schools, that decision would not have been given in the Winnipeg case. But the Privy Council held that this Act does not compel anybody to do anything; it only establishes public schools which all may use.

Sir MACKENZIE BOWELL.—Does your argument apply to the Confederation Act so far as it affects the old provinces of Quebec and Ontario? I refer to section 93, subsection 3, which says:—

“Where in any province a system of separate or dissentient schools exists by law at the union, or is thereafter established by the legislature of the province, an appeal shall lie to the Governor General in Council from any act or decision of any provincial authority affecting any rights or privileges of the Protestant or Roman Catholic minority of the Queen's subjects in relation to education.”

Mr. MCCARTHY.—That does not provide that if separate schools are established they are to be perpetual. If you will apply that it illustrates my meaning. Of the four provinces that formed the Dominion at first two had separate school systems. By the constitution separate schools were made perpetual in those provinces, the other provinces if they chose to establish separate schools had the right to do so. If they did so they would be in the same position as Manitoba occupies, and if the separate school system was abolished the minority had the right to come here and complain. But the separate schools were not made perpetual. In Quebec and Ontario the separate school system is part of the organic law. But provinces like Nova Scotia and New Brunswick which had no separate school system at the time of Confederation, might establish a system and, five years afterwards, repeal it; but if they did so the minority could do as the minority in Manitoba is now doing—apply to the Dominion Executive and afterwards to the Dominion Parliament. In other words it is withdrawn—I do not know whether except to lawyers I can make myself plain. The control of legislation is vested in these provinces subject to this reservation—that if they establish separate schools and afterwards withdraw them, the minority can come and ask the Dominion Executive and afterwards the Dominion Parliament to restore them; not because there is no right in the provinces to abolish separate schools, but that that circumstance will give the Dominion authorities the right to investigate the whole subject and, if necessary in their judgment, to overrule the action of the province.

Sir MACKENZIE BOWELL.—Then, I understand you that in Ontario the legislature can repeal all the amendments made to the Separate Schools Act by which the separate school system has been extended in our province?

Mr. MCCARTHY.—Yes. All the advantages that have been given under the Mowat administration—(putting the question in that way)—

Sir MACKENZIE BOWELL.—That is what I mean.

Mr. MCCARTHY.—If those advantages were taken away the Roman Catholic minority would have the right to come here and ask to have them restored.

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Hon. Mr. Ives.—Suppose the legislature of Quebec were to abolish the dissentient schools, as the Protestant schools in Quebec are called, is it your opinion that the remedy of the Protestants of Quebec would be by the use of this appeal?

Mr. McCARTHY.—No.

Hon. Mr. Ives.—What would be their remedy—disallowance?

Mr. McCARTHY.—No; the Act would be *ultra vires*, and the courts would so declare it.

Hon. Mr. Ives.—But if the law is being executed, the fact that it is bad does not help the people.

Mr. McCARTHY.—But the law could not be enforced; it would be *ultra vires*.

Hon. Mr. Ives.—I understand that in this judgment their Lordships say that this law cannot be enforced in Manitoba. I understand that the decision goes the length of saying that the law of 1890, in so far as it imposes taxes upon Roman Catholics, cannot be enforced.

Mr. McCARTHY.—No, no, you have not read it.

Hon. Mr. Ives.—Yes, I have.

Mr. McCARTHY.—I beg pardon; I withdraw that. But I think no one else would have come to that conclusion. The decision is that the law is a good law, but that this Council can set in motion proceedings by which the Dominion Parliament can, to a certain extent, modify it.

Hon. Mr. Ives.—I understand you to mean that in such a case as I speak of there should not be disallowance, that the minority in Quebec would not have this right of appeal, and the only satisfaction the people would have would be in the fact that the law would be bad law.

Mr. McCARTHY.—I do not know what better you would have. The law would be waste paper. It would be just the same as if in Ontario we attempted to deprive the minority of their separate schools. The Roman Catholics of Ontario cannot be deprived of their separate schools and the same is true of the dissentient schools in Quebec.

Hon. Mr. Ives.—But they could pass the bill in the legislature.

Mr. McCARTHY.—But it would not be worth the paper it was written on.

Sir CHAS. HIBBERT TUPPER.—According to the public press the Manitoba Government intend to take that stand. It is said that if a remedial order is passed they will resist or ignore that law. Sometimes it does not much matter whether it is good law or bad law, if it is still enforced.

Hon. Mr. DICKEY.—Does not that appear in the Queen's speech in opening the legislature?

Mr. McCARTHY.—I have not seen the Queen's speech, but I should think the Lieutenant Governor would not be allowed to say that. But I understand that the position of the Manitoba Government is that they will resist by every constitutional means in their power the passage of any remedial order and that they will not obey the order, which is something that they have a perfect right to do.

Sir CHAS. HIBBERT TUPPER.—I had no reference to the Queen's speech.

Sir MACKENZIE BOWELL.—Mr. Sifton, the Attorney General, is reported to have said so.

Mr. McCARTHY.—I have here the Queen's speech. It says:

"By the judgment of the Judicial Committee of the Privy Council recently pronounced on an appeal from the Supreme Court of Canada, it has been held that an appeal lies to the Governor General in Council on behalf of the minority of this province, inasmuch as certain rights and privileges given by prior provincial legislation to the minority in educational matters had been affected by the Public Schools Act, and that, therefore, the Governor General in Council has power to make remedial order in respect thereto. Whether or not a demand will be made by the Federal Government that that act shall be modified is not yet known to my Government. But it is not the intention of my Government in any way to recede from its determination to uphold the present public school system, which, if left to its own operation, would in all probability soon become universal throughout the province."

No person could object to that statement. The Government of the province has a perfect right to take this position, and, if sustained by the Legislature, this Parliament will have jurisdiction to enforce the remedial order, if the Council think fit to make any such remedial order. I am not answerable for the statements made in the press, and I am not going to make any statement on a point such as that suggested by the Minister of Justice (Sir Charles Hibbert Tupper).

SIR CHARLES HIBBERT TUPPER.—I referred to the report of an interview with the Attorney General of Manitoba and then only to illustrate the hypothetical position of affairs suggested by Mr. Ives, and to show that sometimes it was poor satisfaction to the people to know that the law is bad; even bad law is sometimes enforced.

MR. MCCARTHY.—I do not want to occupy any better position than to be sure that a law is *ultra vires* if I do not want to obey it.

SIR CHARLES HIBBERT TUPPER.—I am not differing from you at all, but was merely illustrating the position.

MR. MCCARTHY.—I have pointed out some of the considerations, though I am afraid very few of the considerations which actuated the people of Manitoba, and I have shown that it is the will of the people of Manitoba you are asked to overrule in this matter. I would now give you a history of the legislation, because, no doubt, you would desire to know before you would over-rule or coerce a free legislative body exactly how its will was carried out. You will remember that I stated yesterday that the agitation for the abolition of the separate school system commenced, apparently, in the fall of 1876. As to that agitation, I am not able to give you the facts, but in glancing over the history of Manitoba I gathered that it was in 1876,—that is five years after the separate school system was introduced—that the people began to agitate for a change. A section of the people took hold of the question and laid down a platform, on the lines of which they claimed that the change should be effected. But it was not until 1889, so far as I know—and I speak subject to correction—that any political party took the question up, and became convinced that there was a majority of the people prepared to endorse the change and carry it into effect. In August, 1889, at a place called Clearwater, Mr. Smart, who was then a member of the Greenway Government, the present Government of Manitoba, announced that the Government had determined upon the policy of abolishing the separate school system and establishing a public school system, with a Department of Education and a Minister of Education, following in the wake of the Ontario Administration, and adopting the policy they had pursued. It was in the following year, 1890, that the matter became a subject of legislation, and I want to point out to you the various votes that took place upon it, and you will see with what unanimity the question was carried. The question first arose on the 10th March, and by reference to the Journals of the Legislative Assembly of that date, you will see that the following motion was moved by Mr. Gillies, who was then the leader of the Opposition, seconded by Mr. Roblin. This was on the second reading of the bill, and Mr. Gillies moved in amendment:—

“That, whereas by section 93 of the British North America Act it is declared that where in any province a system of separate or denominational schools exists by law at Union, or is thereafter established by the legislature of the province, an appeal shall lie to the Governor General in Council from any act or decision of any provincial authority affecting any right or privilege of a Protestant or Roman Catholic minority of the Queen's subjects, in relation to education, with power to the Parliament of Canada to make laws for the execution of the decisions of the Governor General in Council in connection with such an appeal—”

You will excuse me if I do not read the intervening clauses. The resolution goes on:

“Whereas it is desirable that a uniform system of public schools should be established—”

Remember this is the resolution of the leader of the Opposition—

“—wherein all the youth of the province may receive elementary education, without the possibility of legislation providing for the same, being subject to repeal or revision to the Parliament of Canada, or any other than the legislature of this province, which alone should deal with this vital subject; and,

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"Whereas in view of such special provision, applicable to the province of Manitoba, grave doubts exist as to the validity of the legislation embodied in this bill, the effect of which is practically to abolish the system of denominational schools existing in the province, at and since its formation, and it is inexpedient that such an important matter should be passed by this House before its legality has been authoritatively determined or the Manitoba Act so amended as to clearly provide for such abolition;

"Therefore, be it resolved that the bill be not read a second time, but that such steps be taken as will secure an amendment, by the Imperial Parliament, of the British North America Act or the Manitoba Act, whereby the right of the legislature of Manitoba to deal with educational matters in the province shall be firmly and clearly established without appeal to the Governor General in Council or to the Parliament of Canada."

This was the view of the Opposition, adopting the proposed system in its broadest terms but proposing delay, so that the questions of law should be settled by the repeal of those clauses which appear to interfere with the free power of the legislative body. That resolution came to a vote and it was voted down by 30 to 5. The five who voted "yea" were Messrs. Gillies, Norquay, O'Malley, Roblin and Wood, not by any means all the Opposition, which consisted at that time of ten or twelve members;—it certainly was more than five. Another amendment was moved to give the bill the six months' hoist, and this was voted down by 7 for to 19 against, the seven who voted "yea" being Messrs. Gelley, Jerome, Lagimodière, Marion, Martin (Morris), Prendergast and Wood. I do not even see Mr. Fisher's name here?

Hon. Mr. ANGERS.—Does his name appear on the other side of the vote?

Mr. MCCARTHY.—No.

Mr. EWART.—He was away sick, I believe.

Mr. MCCARTHY.—At page 91 of the Journals will be found another amendment declaring that :

"Whereas the Bill before this House involves most important educational principles, and most radical changes in the existing school laws; and

"Whereas it is an essential privilege of the people to pronounce upon so important a question, before it is introduced in the House through their representatives; and

"Whereas this House is of opinion that the electorate is against the principles of the Bill—

"Resolved, that it is due to the electorate that this House do not endorse the principles of the said bill before the same is submitted to the said electorate."

This was voted down by 6 for to 22 against and the second reading was carried on the same division reversed: Then, on the third reading of the bill at page 107 of the Journals, another long resolution was moved by the French member, Mr. Gelley—I think he is French—

Mr. EWART.—Yes.

Mr. MCCARTHY.—This resolution declares that whereas grave doubts exist as to the constitutionality of the bill, and so on, therefore that the bill "be referred back to a committee of the whole House" to make certain amendments. That was voted down by 11 for to 25 against, and the bill was finally passed by 25 for to 11 against. Now, I need not trouble you with the changes made in 1891-92, because there seemed to have been no division on them. The changes were slight, and there was no division of the House upon them. In 1892 an election took place. You will remember the objection—and there was some force in it—that when this bill was brought up it was in the third session of that legislature, that the subject had not been before the people at the time of the previous election and that an opportunity ought to have been afforded to the people to pronounce upon it before it was dealt with by the legislature. But the election came on in 1892, and I say without fear of contradiction by my learned friend or anybody else that the great question before the people in that election was the question of the schools. Pamphlets were issued on either side and the people were instructed and educated on the question. In 1893 the new House met and the matter came up for decision before it. The repeal of the bill was moved in the House consisting of forty members, as you will find that in the Journals of 1893, page 97. On the vote being taken 34 voted to sustain

the Act and only 4 against, Messrs. Fisher, Jerome, Paré and Prendergast. Of the 34 at least one was a French representative, Mr. Martin, the same gentleman I believe, whose affidavits were read by my learned friend Mr. Ewart the other day. So that in a House of 40, with 39 to vote (one being in the chair), 38 did vote, and only 4 for the repeal of the bill. And it must be remembered that this was after the measure had undergone the most thorough and exhaustive discussion in the constituencies and after the people had pronounced upon it. All those who voted for repeal were French representatives, except Mr. Fisher, who is my learned friend's partner, and that is the only way I can account for his having given poisoned and falling away from his Liberal views and the principles he formerly held.

Hon. Mr. ANGERS.—Is any one who changes his views "poisoned"?

Mr. McCARTHY.—That depends upon what the change is. Mr. Jérôme is from Carillon, which, I believe, is in Provencher. Then, Mr. Paré is from La Verandrye, and he and Mr. Prendergast also, I believe, are from Provencher. And so, in the whole province, except my friend—or rather my learned friend's friend, for I am not acquainted with him—Mr. Fisher, all the representatives, except the three representatives from the one Dominion constituency of Provencher, are in favour of the law and against its repeal. And even Provencher is not unanimous, for I believe that Mr. Martin was one of the representatives of Provencher. Then you know about the bill of 1894, the disallowance of which has been urgently pressed upon you. That bill was carrying out the principles of the School Act of 1890. The six months' hoist of that bill was moved by Mr. Jerome and the vote stood 4 for to 31 against. So that if the deliberate opinion of the province upon the question, a question which had been agitated in the province from 1876 has any weight, you have here evidence of what that opinion is. I have told you the position of one political party, but I have here also the Conservative platform in the election of 1892. I was astonished to hear my learned friend say that he represented in this matter the Conservatives in the province of Manitoba. I do not mean to say that he appeared for them, but he said he spoke the opinions of the Conservatives of Manitoba and was astonished that the Conservatives here should differ from those in Manitoba. He mistakes very much the views of the Conservatives of Manitoba. I have here the Conservative platform of 1892:—

The Opposition hereby declare:

1. That they are in favour of one uniform system of public schools for the province.
2. That they are ready and willing to loyally carry out the present school act—should it be held by the Judicial Committee of the Privy Council of Great Britain to be within the legislative power of the province.
3. That in the event of such school act being held by the Judicial Committee of the Privy Council of Great Britain to be beyond the legislative power of the province; then they will endeavour to secure such amendments to the "British North America Act" and the "Manitoba Act" as will place educational matters wholly within the legislative power of the province of Manitoba without appeal to Governor the General in Council or the Parliament of Canada.

So I have given you the views of the Liberal party, of the Conservative party, showing practical unanimity in the province on this question of education. Another point I have brought before you and which cannot certainly have been without effect, was the inefficiency of the French school system. The two kinds of schools were started practically upon an equality and there was no apparent reason why one should grow to be better than the other. Let me give you an example, which has been published, and never contradicted, of the kind of questions put in the examination of a first class teacher in the separate schools. If this is the standard required of a first class teacher, we cannot be very much astonished if the scholars do not show very great advance in the path of learning. Here is part of the examination:

"Catechism.

"(1.) What is the church? Where is the true church? Ought we to believe what the Catholic Church teaches us, and why?



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"(2.) What is the Eucharist? What is necessary to do to receive with benefit this great sacrament?

"(3.) What is sanctifying grace? How is it lost?

"(4.) Name and define the theological virtues.

### *"Comportment."*

"(1.) How is a letter addressed, when written to a prelate, to a priest, to a professional man? How are such letters concluded?

"(2.) In conversation, what titles do you employ in speaking to these same persons?

### *"History."*

"(1.) Describe the defeat of the American armies near Chateaugay.

"(2.) Who was St. Thomas Becket? What difficulty had he with Henry II.? How did he die? What was the fate of Marie Stuart? Write a short note on the Treaty of Paris. Who was then Governor of Canada?

### *"Geography."*

"What is the capital of England?" "What is the capital of Canada?" and so on. This is a fair example of the examination for first class teachers in the separate schools under the old system, as I am informed, and the legislature thought that the system was not working satisfactorily. These and other papers were sent as examples of the efficacy of their schools by the Catholic section of the board of education to the Colonial Exhibition at London in 1886. Now another point I submit to you is that this system has been in force for five years, but it has not had quite a fair trial. I will ask Dr. Blakely to set me right with regard to the figures if I am wrong. The former system was to divide the legislative grant between public and separate school boards according to the number of school children, a census of the school population being required by the law to be taken. Having ascertained the sum payable to the Protestant and the Catholic boards these sums were subdivided according to the number of schools. And this is a point to be noted. I was surprised to learn that there were no less than 11 separate schools in Winnipeg, but I found equal cause for surprise in the fact that there were 88 others. If one did not understand the sense in which the word "schools" is understood, the figures would be misleading. There is nothing unjust about it, but one must understand this point in judging of it.

Sir MACKENZIE BOWELL.—Is the division not made per capita?

Mr. MCCARTHY.—Yes, between the two kinds of schools, but the subdivision is according to the number of schools or classes.

Hon. Mr. FOSTER.—Is that true of both boards?

Mr. MCCARTHY.—Yes; I am not suggesting that there is anything unfair about it, but it is misleading if you do not understand it. This was one grant of public money. But there was another grant, according to a method different from the system in Ontario. The law provided that the township councils should vote \$20 per month for each school. Our system in Ontario is that the trustees make up an account of what they want and demand the sum. They can collect it themselves or call upon the municipal council to collect what they want. In Manitoba it was township money, but the township had no discretion in the matter as to the amount to be given. Until the Act of 1894 was passed, in townships that were favourable to the separate school system they had been paying this grant to the separate schools. The Act of 1894 was intended to do away with that granting of public money to separate schools which had been continued, and to bring the school system into harmony. I use this to show that this system has enabled separate schools to be carried on with public money, so that the public school system, established under the law of 1890 has not had a fair trial, though it has been in existence for five years. I have put in a list of the schools in Manitoba showing the number at the time of the passing of the Act.

Hon. Mr. FOSTER.—Was there any general principle upon which they made a division of classes, and was that general principle observed in the two sets of schools?

Mr. McCARTHY.—There is no principle common to both. It is almost impossible to find out what principle was followed in the French schools, because the reports are not always printed, and when printed they are in French.

Mr. EWART.—And you cannot read them.

Mr. McCARTHY.—And, as my learned friend observes, I cannot read them.

Hon. Mr. FOSTER.—Was the division into classes merely arbitrary?

Mr. McCARTHY.—Dr. Blakely tells me that they were made up into classes according to grade.

Hon. Mr. FOSTER.—Would that be like a department—primary, secondary and so on?

Mr. McCARTHY.—Yes; the children in one grade would be one class.

Hon. Mr. FOSTER.—That would be what we would call a form?

Mr. McCARTHY.—Yes.

Hon. Mr. FOSTER.—Then there would be some general principle.

Mr. McCARTHY.—I am not bringing this forward to show that there was any unfairness in the division of the provincial grant, but what I have stated shows that up to 1894, they were able to get public money for separate schools in those townships that were favourable to separate schools—\$20 for each class.

Hon. Senator BERNIER.—Twenty dollars for each school.

Mr. McCARTHY.—I am informed that it was to each class in towns and to each school in the country. The list of schools that I have put in shows that there were 91 French schools in receipt of public money under this system, at the time the bill was passed.

Hon. Senator BERNIER.—They should be called public schools.

Mr. McCARTHY.—It does not make any difference what they are called. I have taken the facts from the public documents and I give the names given in those official papers. I am able to show also that of these schools 36 have come in under the public school system. You know from what Mr. O'Donohue said what pressure the people have been kept under; but, notwithstanding the pressure exerted by their priests and religious teachers, they are coming under the public school system and many have come in since this new amendment to the school law was passed. I bring this forward to show that you are not dealing with the matter simply as it stood in 1890, but as it stands in 1895, or it may be as it will stand in 1896. The withdrawal of this \$20 a month of public money has forced many of the schools to come in and adopt the public system. I have here the report of Mr. Young, Inspector of Public Schools. This report was made at the end of 1894 and covers the whole of that year.

Sir MACKENZIE BOWELL.—Is he the inspector of French schools? (Report filed Exh bit "Q.")

Dr. BLAKELY.—He is the inspector of the south-eastern division, in which the schools are nearly all French schools.

Now, as to whether these are Protestant schools and in that sense offensive to the Catholic people, so that their children cannot fairly attend them. I point out to you that the law distinctly declares that they shall be non-sectarian schools, and I add to that the self-evident fact that if they are not conducted upon a non-sectarian basis the right of any objecting parties is to appeal to the law. The Legislature, whose acts you are called upon to amend, declared the schools to be non-sectarian. If through the action of the advisory board or for any other reason they are not carried on as non-sectarian schools, they are not carried on according to the law of the province, and anybody aggrieved can appeal to the courts at much less expense than that involved in sending learned counsel down here to Ottawa. The schools as established are not amenable to the allegation of my learned friend. His argument was substantially that the religious exercises under this Public Schools Act of 1890 are identical with those of the Protestant schools under the Act of 1871, and that, if they were Protestant in 1871 they are Protestant still, although their prayers are adopted by the advisory board under the School Act. I dispute both my learned friend's facts and his conclusions. I have before me the religious exercises as they were required under the Protestant system and

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also those under the Public Schools Act of 1890. If you will permit me I will draw your attention to the difference. In 1887 the regulations of the Protestant section of the Board of Education regarding religious exercises provide :—

"1. Every school established and in operation under the authority of the Protestant section of the Board of Education for Manitoba shall be opened and closed daily with prayer and the reading of a portion of Scripture ; and it shall be the duty of the teacher of each school to allot a suitable portion of each school session to this exercise and to conduct the same as herein directed."

Now we come to what these exercises are to be :—

"Bible reading. The Bible shall be used as a text book in the Protestant schools of Manitoba. A supply for use in each school may be obtained by the trustees, otherwise each pupil from standard 3 upwards shall be required to provide himself with a Bible in addition to his other text books."

This is not to be found in the present regulations. It is not required and not permitted.

The regulations of 1887 further provide :—

"The selections for reading shall always include one or more of the lessons in the authorized list given herewith, but any other selection from Scripture may, in the discretion of the teacher, be read in connection with them."

This list is practically the same, with a modification to which I will draw your attention in a moment, but the discretion in the second part of the section is not permitted.

Sir ADOLPHE CARON.—You mean under the new regulations ?

Mr. MCCARTHY—Yes. The third clause with regard to Bible readings in the old regulations is as follows :—

"The Scripture lesson in each school shall follow the opening prayer and shall not occupy more than 15 minutes daily. Until notes and questions are provided under the authority of the board, the reading shall not be accompanied by commentary or explanations."

The Scriptures permitted under the old system were as follows :—Part 1, Historical ; Part 2, Devotional, didactic, prophetic ; Part 3, the Gospels ; Part 4, the Acts of the Apostles ; Part 5, selections from the Epistles, and Part 6, Miscellaneous. Under the present regulations the only Scripture readings permitted are Part 1, Historical, and Part 2, the Gospels. Then it is provided that these Scriptures may be either from the English version of the Bible or from the Douay version. Now I may ask my learned friend to point out what he objects to in these Scripture readings. They are less than are allowed in Ontario, although we Ontario people know that the late Archbishop Lynch approved of the Scripture readings and allowed the new edition popularly known as the Ross Bible to be issued. I believe that this was copied from the Ross Bible, but to prevent there being any possibility of complaint on the part of minority it is confined to the historical part to the Gospels and the Scripture may be read from either version, and I suppose they are practically identical.

Sir MACKENZIE BOWELL.—Is what is known as the Ross Bible used in the separate schools of Ontario ?

Mr. MCCARTHY—No, but the reason why the Archbishop claimed the right to interfere with the reading of the Scriptures in the public schools is that a large portion of the children under his charge were attending those schools. Now let me draw your attention to the prayer, which is identical under the two regulations, only the closing prayer being now provided for. Under the old regulations it is preceded by the Lord's prayer, after which it proceeds :

"Most merciful God, we yield Thee our humble and hearty thanks for Thy fatherly care and preservation of us this day and for the progress which Thou hast enabled us to make in useful learning ; we pray Thee to imprint upon our minds whatever good instruction we have received and to bless them to the advancement of our temporal and eternal welfare, and pardon, we implore Thee all that Thou hast seen amiss in our thoughts, words and actions. May Thy good providence still guide and keep us during

the approaching interval of rest and relaxation so that we may be prepared to enter on the duties of the morrow with new vigour both of body and mind; and preserve us, we beseech Thee, now and for ever, both outwardly in our bodies and inwardly in our souls for the sake of Jesus Christ, Thy Son, Our Lord. Amen."

That is the prayer together with the Lord's prayer. Now on the evidence I have given you, I submit that my learned friend's statement of the facts is not correct. I believe that nobody could object to this form of prayer. Objection is taken to the instruction given in commandments, etc. The regulation is as follows:

"To establish the habit of right-doing, instruction in moral principles must be accompanied by training in moral practices. The teacher's influence and example, current incidents, stories, memory gems, sentiments in the school lessons, examination of motives that prompt to action, didactic talks, teaching the Ten Commandments, etc., are means to be employed."

All I can say, is, without entering upon the theological question as to whether the commandments can be taught from the Protestant and Roman Catholic standpoints at the same time, that the remedy for this is simply that of having this withdrawn if it is offensive. Within the programme of studies, which also I have here, there are no less than nine grades or forms. My learned friend does not object to all these, and I think he could not find ground for objection except in the one he has called attention to. What he said on that subject might lead you to believe that the case was merely an example of the others, but I think he has given the only one to which objection can be taken that is the history curriculum in the seventh grade—English, religious movements, Henry VIII and Mary. Now he says that the history of England cannot be taught, so far as that period is concerned, from the Roman Catholic standpoint and the Protestant standpoint in the same school. And I will admit, with the little knowledge that I have of the subject, that it is a difficult point. But the remedy is a simple one and it ought to be a simple one. What we ought to be concerned with is the truth. We know the difficulty of ascertaining the truth with regard to a historical incident of thirty or forty years ago; how much more difficult to ascertain what really happened in the reign of Henry VIII? We know that it has been the habit of historians to write the history of that period from their own standpoint—not history but a partisan statement. We also know—at least I do not pretend that I knew until I was told—that the tendency has been among more recent writers to correct that fault, and to have histories as near the truth as can be given. The history in use is Miss Buckley's History, which up to quite a recent time has been the fairest history that has been written upon this subject; so fair that I am informed,—and I speak subject to contradiction if I am wrong—that it has been in use in the convent schools, which are not subject to Government inspection. So we find that in the religious exercises there is nothing that can be complained of. We find that in a curriculum there is only one subject that is objected to and with regard to that I have given an explanation. Miss Buckley's history was in use in this province up to a recent time, when the department had a history prepared in which certain phrases which had been pointed out as objectionable from a Roman Catholic standpoint were omitted. But all these are mere matters of detail. If these points are not arranged on a non-sectarian basis the administration of the system is to that extent in defiance of the law and that can be corrected. And I can speak for the Education Department that they are happy to correct anything of that kind and they have no desire to force upon the people of Manitoba history or religion in any way offensive to their religious convictions. What they desire is that the whole people should be united in one system of schools and brought together in harmony. Now it is said Catholics cannot attend these schools and that if this system is continued the effect will be that while the Catholics continue to pay their taxes for the public schools, they will have to pay for the support of other schools which they can conscientiously attend. This is set forth in clause 11 of the petition. Now I can speak from my own knowledge and experience. Here in the province of Ontario the Catholics have the right to separate schools and yet the result is that more than half the Roman Catholic children are attending public schools voluntarily.

Hon. Mr. OUVIET.—May I ask under what authority you state that?

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Mr. McCARTHY.—I suppose anything that Mr. Fisher says will be good evidence. He spoke the other day in the legislature, and I think he rather over-stated the facts when he said that far more than half attended the public schools.

Hon. Mr. OUMET.—Mr. Fisher is not before us.

Mr. McCARTHY.—He is represented—I mean he is the champion of minority in Manitoba.

Sir MACKENZIE BOWELL.—Do the school reports show that with regard to Ontario?

Mr. McCARTHY.—They do not show it in terms, but I base the statement upon a calculation which I will give you and which you can accept or not as you think right. I find that the school population in the province of Ontario—this is taken from the last school report—is 595,238. This includes Catholics, Protestants and all. The Roman Catholic portion of that population is 100,324. The total number not attending schools is 86,000, the relative portion of which for the Roman Catholic schools would be 19,000, leaving 81,000 to be provided with school accommodation. The number attending separate schools is 37,466 leaving 43,797 attending the public schools.

Hon. Mr. CURRAN.—Have you anything to show how many Catholic children are attending public schools in those places where separate schools are established?

Mr. McCARTHY.—No, except as I am going to point out, I have not had time to go into this matter minutely. The petition asserts that Roman Catholics cannot attend the public schools; I am proving that they do.

Hon. Mr. CURRAN.—Where there are no separate schools.

Hon. Mr. DICKEY.—Will you tell me in what sense you use the word "attending." Do you mean registered?

Mr. McCARTHY.—I understand this to be actual attendance.

Hon. Mr. FOSTER.—It must be the registered attendance.

Mr. McCARTHY.—I am not sure that I understand the Secretary of State's (Mr. Dickey) question. I take the figures as they appear in the reports and I use the word "attendance" as applying in the same way throughout.

Hon. Mr. DALY.—This represents the public schools, not the high schools or collegiate institutes?

Mr. McCARTHY.—Exactly. This is what Mr. Fisher said, speaking of the Ontario school system: "Every child in the land is taught in a State school. The immense majority of the Roman Catholic children go to public schools, rather preferring them to separate schools. In Ontario there are 700 municipalities and in 500 of these at least there are no separate schools. Separate schools have not been increasing in number, except for a short time when Mr. Meredith was weak and foolish enough to join Mr. Dalton McCarthy in an attack on separate schools, which led to a boom in such schools."

Sir MACKENZIE BOWELL.—So you see the effect of what you are doing.

Mr. McCARTHY.—I give you the benefit of what Mr. Fisher said. I am not ashamed of what I have done. I may give you an example of what I know myself in my own county—not my own riding, but the whole county of Simcoe. The whole Roman Catholic school population is 2,317. There are only three separate schools with a total attendance of 221. So there is a total of more than 2,000 Roman Catholic children not attending separate schools in that county. I know several townships in which the Roman Catholics are in sufficient numbers to support separate schools in efficiency in which no such schools have been established. Now, on this question, I give an authority that will be accepted by everybody among the minority in Manitoba, though I do not know that the Premier will accept it. I give you the words of the Most Rev. Francis Satolli, delegate of the Apostolic See to the United States of America. You may remember that this question of separate schools was brought up by Archbishop Ireland, one of the ablest prelates of the church, he taking a position on which his brethren differed from him. He thought that the Roman Catholic children were falling behind in the race of life by reason of the inefficiency of the educational system under which they are trained, and he said that he could see no reason why the Catholic children should not attend the public schools. That discussion resulted in Mgr. Satolli coming to this continent. And here is the letter in which he wrote his decrees, representing, as I understand, the Congregation of the Propaganda. I got this document from the library. It bears the imprint of John

Murphy & Co., printers to the Holy See, Baltimore, U.S.A. The first paragraph is a general instruction :

"All care must be taken to erect Catholic schools to enlarge and improve those already established, and to make them equal to the public schools in teaching and in discipline."

The next section is :

"When there is no Catholic school at all——"

That meets the Solicitor General's (Hon. Mr. Curran's) case.

"—or when the one that is available is little fitted for giving the children an education in keeping with their condition, then the public schools may be attended with a safe conscience, the danger of perversion being rendered remote by opportune, remedial and precautionary measures, a matter that is to be left to the conscience and judgment of the Ordinaries."

I pass from there to No. 5 :—

"We strictly forbid any one, whether Bishop or Priest, and this is the express prohibition of the Sovereign Pontiff through the Sacred Congregation, either by act or by threat to exclude from the Sacraments as unworthy, parents [who choose to send their children to the public schools.] As regards the children themselves this enactment applies with still greater force.

"6. To the Catholic Church belongs the duty and the divine right of teaching all nations to believe the truth of the Gospel, and to observe whatsoever Christ commanded; in her likewise is vested the divine right of instructing the young in so far as theirs is the Kingdom of Heaven; that is to say, she holds for herself the right of teaching the truths of faith and the law of morals in order to bring up youth in the habits of a Christian life. Hence, absolutely and universally speaking, there is no repugnance in their learning the first elements and the higher branches of the arts and the natural sciences in public schools controlled by the State, whose office it is to provide, maintain and protect everything by which its citizens are formed to moral goodness, while they live peaceably together, with a sufficiency of temporal goods, under laws promulgated by civil authority.

"For the rest, the provisions of the Council of Baltimore are yet in force, and, in a general way, will remain so; to wit.: 'Not only out of our paternal love do we exhort Catholic parents, but we command them, by all the authority we possess, to procure a truly Christian and Catholic education for the beloved offspring given them of God, born again in baptism unto Christ and destined for heaven, to shield and secure them throughout childhood and youth from the dangers of a merely worldly education, and therefore to send them to parochial or other truly Catholic schools.' United with this duty are the rights of parents which no civil law or authority can violate or weaken.

"12. As for those Catholic children that in great numbers are educated in the public schools, where now, not without danger, they receive no religious instruction at all, strenuous efforts should be made not to leave them without sufficient and seasonable instruction in Catholic faith and practice. We know by experience that not all our Catholic children are found in our Catholic schools. Statistics show that hundreds of thousands of Catholic children in the united States of America attend schools which are under the control of State Boards, and in which, for that reason, teachers of every denomination are engaged. Beyond all doubt, the one thing necessary, i.e., religious and moral education according to Catholic principles, is not to be treated either lightly or with delay, but on the contrary with all earnestness and energy.

"The adoption of one of three plans is recommended, the choice to be made according to local circumstances in the different States and various personal relations.

"The first consists in an agreement between the Bishop and the members of the School Board, whereby they, in a spirit of fairness and good-will, allow the Catholic children to be assembled during free time and taught the Catechism; it would also be of the greatest advantage if this plan were not confined to the primary schools, but were extended likewise to high schools, colleges, in the form of a free lecture.

"The second: to have a catechism class outside the public school building, and also classes of higher Christian doctrine, where, at fixed times, the Catholic children would

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assemble with diligence and pleasure induced thereto by the authority of their parents, the persuasion of their pastors, and the hope of praise and rewards.

"The third plan does not seem at first sight so suitable, but is bound up more intimately with the duty of both parents and pastors. Pastors should unceasingly urge upon parents that most important duty, imposed both by natural and by divine law, of bringing up their children in sound morality and Catholic faith. Besides, the instruction of children appertains to the very essence of the pastoral charge; let the pastor of souls say to them with the Apostle: 'My little children of whom I am in labour again until Christ be formed in you.' Let him have classes of children in the parish, such as have been established in Rome and many other places and even in churches in this country with very happy results.

"These words I hope the pastors will take to heart. If they would do this duty in their own sphere, there would not be this trouble about the state educating the children in secular matters.

"Nor let him, with little prudence, show less love for the children that attend the public schools, than for those that attend the parochial; on the contrary, stronger marks of loving solicitude are to be shown them; the Sunday school and the hour for catechism should be devoted to them in a special manner, and to cultivate this field let the pastor call to his aid other priests, religious, and even suitable members of the laity in order that what is supremely necessary may be wanting to no child."

I do not want to have it supposed that I read only those portions that are suitable for my own argument, so I lay this document before the Board in its entirety. I think it will establish the fact that Catholic children can attend the public schools and the allegation of a grievance in that regard in the petition is not well founded and ought not to lead you to any such result as the petitioners seek by their prayer.

The Council adjourned until 2.30 p.m.

### AFTER RECESS.

The Council resumed at 2.30 p.m.

Mr. McCARTHY.—I have the honour to say, in finishing the history of the question, whatever may be said as to its merits, that the matter of the threatened interference has been dealt with by the local legislature during the present session, and I have read to you an extract which my learned friend kindly furnished me from the Lieutenant Governor's speech at the opening of the session, and I will just supplement that by the resolutions and the vote upon those resolutions with reference to this threatened interference. Mr. Fisher, on the House going into Committee of Ways and Means, proposed:

"1. That while this House is determined at all times to maintain to the fullest extent that the constitution warrants its exclusive power to make laws with respect to education, yet it recognizes that the highest judicial tribunal in the realm has recently decided that 'such exclusive power is not absolute, but limited,' and that the limitation was embodied in the constitution as a 'parliamentary compact,' between the Dominion and the protection, amongst other things, of the rights and privileges of the Roman Catholic minority in relation to education, including rights and privileges that were acquired by them since the union.

"2. It has been also adjudged by the same tribunal that 'the rights and privileges' of the Roman Catholic minority in relation to education, which existed prior to 1890, have been affected by the Public Schools Act of that year.

"3. The same tribunal has further decided that in the event, which is now foreshadowed, of this legislature being called upon to remove the grievance in the judgment

referred to, and in the further event of the legislature declining to do so, a case will have arisen where "the parliament of Canada is authorized to legislate on the same subject.

"4. That this House is always prepared to abide by the constitution, which is the safeguard of our provincial rights, and will not be a party to its violation, nor will it seek to impair the efficiency of its provisions for protecting the rights and privileges of any class of Her Majesty's subjects. At the same time the House would deplore the occurrence of anything calling for the exercise by the Parliament of Canada of its authority to legislate on the subject of education, the ultimate effect of which it is impossible to foresee.

"And having regard to the suggestions of the tribunal referred to that 'all legitimate ground of complaint would be removed if the present system were supplemented by provisions which would remove the grievance upon which the appeal is founded, and were modified so far as might be necessary to give effect to those provisions,' without a repeal of the present law, this House is ready to consider the grievance referred to with a view to providing reasonable relief, while maintaining, as far as possible consistent with that object, the principles of the present act in their general application."

Upon that coming up a debate took place and the Attorney General moved the following as an amendment:—"That all words after the word "while" in the original motion be struck out and the following substituted therefore: "This House loyally submits itself to the provisions of the constitution as interpreted by the Judicial Committee of Her Majesty's Privy Council. It is hereby resolved that the exercise of appellate jurisdiction by the Governor General in Council in such a way as to lead hereafter to the alteration of the principles upon which the public school system of Manitoba is founded will be viewed with grave apprehension. That an interference by the Federal authority with the educational policy of the province is contrary to the recognized principles of provincial autonomy. That this House will by all constitutional means and to the utmost extent of its power resist any steps which may be taken to attack the school system established by the Public Schools Act of 1890, which is believed to be conceived and administered in the highest and best interests of the whole population of Manitoba."

The amendment was carried, as appears from the report of the Manitoba *Free Press*, 28th February, by a vote of twenty-two to ten. Three gentlemen who voted, Messrs. McFadden, Frame and Lyons, all stated that they considered both resolutions uncalled for and voted against them. The debate, consisting of a speech by Mr. Fisher, and a speech by the Attorney General, and also some shorter addresses to the House, may be put in as being worthy of preservation for the history of this interesting occasion.

Hon. Mr. FOSTER.—That is simply a newspaper report?

Mr. MCCARTHY.—That is all. I think they have no other report than that. I now recur to the place that I left off yesterday afternoon for the purpose, and make the statement so that you will see I am not wasting time in my citations, of demonstrating what is perhaps sufficiently well known, but which I cannot too strongly enforce, that the deliberate will, deliberate conviction, of both of the great parties in Canada, sanctioned by public opinion of all shades and classes, is that in school matters there should be no interference by the central body, and I will follow that up by pointing out to this Council that the proposal that is now made to interfere is a far harsher remedy, a far more drastic means of interference, far more humiliating to the province than would have been the disallowance of the Act of 1890. I say it advisedly that it would have been far better for the province that the Act of 1890 should be disallowed, than that there should be the interference which is threatened by those proceedings. I will endeavour to show you why, before I close. I was commencing to refer, yesterday, to the question on the schools which first arose, namely, with regard to the New Brunswick law, and I had got as far as to read certain documents, though not yet reported. Mr. Costigan's resolution, which, perhaps, you will be good enough to consider as read, is as follows:—

"That it is essential to the peace and prosperity of the Dominion of Canada that the several religions should be followed in perfect harmony with those professing them in accord with each other, and that every law passed either by this Parliament or the



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local legislature disregarding the rights and usages tolerated by one of such religions is of a nature to destroy that harmony; that the local legislature of New Brunswick in its last session in 1871 adopted a law respecting common schools prohibiting the imparting of any religious education to pupils, and that prohibition is opposed to the sentiments of the population of the Dominion in general and to the religious convictions of the Roman Catholic population in particular:—That the Roman Catholics of New Brunswick, without acting unconsciously, send their children to schools established under the law in question and are yet compelled like the remainder of the population to pay taxes to be devoted to the maintenance of those schools:—That the said law is unjust and causes much uneasiness among the Roman Catholic population in general disseminated throughout the whole Dominion of Canada and that such a state of affairs may prove the cause of disastrous results to all the confederate provinces, and praying His Excellency in consequence at the earliest possible period to disallow the said New Brunswick school law.”

Hon. Mr. OUMET.—What date was that resolution?

Mr. McCARTHY.—1872.

Sir CHARLES HIBBERT TUPPER.—You had passed that subject, had you not?

Mr. McCARTHY.—I was going to recur to it; I would retrace my steps, as I said this morning. This resolution was moved on the 20th of May and the debate was not concluded. The next time the question came up was on the 22nd May, as will be found at page 148 of the Votes and Proceedings, when the Hon. Mr. Gray moved in amendment to leave out all the words after “Canada” in line two, and to substitute the following:—

“That the constitutional rights of the several provinces should be in no way impaired by the order of this Parliament; that the law passed by the local legislature of New Brunswick respecting common schools was strictly within the limits of its constitutional powers and is amenable to be repealed or altered by the local legislature, should it prove injurious or unsatisfactory in its operation; that not having yet been in force six months, and no injurious consequences to the Dominion having been shown to result therefrom, this House does not deem it proper to interfere with the advice that may be tendered to His Excellency the Governor General by the responsible ministers of the Crown respecting the New Brunswick school law.”

Hon. Mr. Chauveau moved in amendment to the said proposed amendment that all the words after “that” in the original motion be expunged and the following inserted in lieu thereof: “an humble address be presented to Her Majesty, praying that she will be pleased to cause an Act to be passed amending ‘the British North America Act, 1867,’ in the sense which this House believes to have been intended at the time of the passage of the said Act, by providing that every religious denomination in the provinces of New Brunswick and Nova Scotia shall continue to possess all such rights, advantages and privileges with regard to their schools as such denominations enjoyed in such province at the time of the passage of the last mentioned Act; to the same extent as if such rights, advantages and privileges had been then duly established by law.”

Then I pass on to page 167, where the vote is taken on Mr. Chauveau’s amendment which I have just read. The vote is 34 for and 126 against, including in that vote Sir John Macdonald, Alexander Mackenzie, Mr. Blake, the leaders of all parties, and of course it was lost by a large majority.

The question being then put on Hon. Mr. Gray’s proposed amendment, Mr. Colby moved in amendment thereto that all after the word “that” be expunged and the following substituted in lieu thereof:—“this House regrets that the School Act recently passed in New Brunswick is unsatisfactory to a portion of the inhabitants of that province and hopes it may be so modified during the next session of the legislature as to remove any just grounds of discontent that now exist.”

That being advice to the province it was carried by a majority, 117 to 42. Then Mr. Dorion moved that the following words be added to Mr. Colby’s motion, Mr. Colby’s amendment having been carried:—

"And this House further regrets that to allay such well grounded discontent His Excellency the Governor General has not been advised to disallow the School Act of 1871 passed by the legislature of New Brunswick."

Bringing up the disallowance quite clearly. That was voted down by a majority of 117 to 38, and then the question being put on the main motion as amended, the Hon. Mr. Mackenzie moved that the following words be added thereto :—

"And that this House deems it expedient that the opinion of the Law Officers of the Crown in England, and if possible the opinion of the Judicial Committee of the Privy Council should be obtained as to the rights of the New Brunswick Legislature to make such changes in the school law as deprived the Roman Catholics of the privileges they enjoyed at the time of the Union in respect of religious education in the common schools, with the view of ascertaining whether the case comes within the terms of the 4th subsection of the 93rd clause of the North America Act, 1867, which authorizes the Parliament of Canada to enact remedial laws for the due execution of the provisions respecting education in the said Act;" which was agreed to.

And here is the result of the whole :

"The question being then put on the main motion as amended, it was agreed to on a division and is as follows :—

"That this House regrets that the School Act recently passed in New Brunswick is unsatisfactory to a portion of the inhabitants of that province and hopes that it may be so modified during the next session of the Legislature of New Brunswick, as to remove any just grounds of discontent that now exist and that this House deems it expedient that the opinion of the law officers of the Crown in England, and if possible the opinion of the Judicial Committee of the Privy Council should be obtained as to the right of the New Brunswick legislature to make such changes in the school law as deprived the Roman Catholics of the privileges they enjoyed at the time of the Union in respect to religious education in its common schools, with the view of ascertaining whether the case comes within the terms of the 4th subsection of the 93rd clause of the British North America Act, 1867, which authorizes the Parliament of Canada to enact remedial laws for the due execution of the provisions respecting education in the said Act."

So the matter ended there for that session.

The Hon. Minister of Marine asked me what had been done in 1873. On the 14th of May, the House resumed the debate on the amendment which was carried by 98 to 63, and amongst those who voted in the negative, was the President whom I have now the honour of addressing.

Sir MACKENZIE BOWELL.—The government of that day did not act upon that resolution.

Mr. McCARTHY.—I do not know that Sir John Macdonald refused to act.

Sir MACKENZIE BOWELL.—It is the amendment we are talking about. You will find it laid down in Todd more clearly.

Mr. McCARTHY.—Yes ; that amendment was carried by 98 to 63.

Hon. Mr. COSTIGAN.—You seem to lay great stress upon the fact that the House did not express anything beyond sympathy in regard to that question.

Mr. McCARTHY.—No, no, not sympathy.

Hon. Mr. COSTIGAN.—You had some yourself.

Mr. McCARTHY.—Yes, but sympathy and legislative Acts are two different things. Then in 1874 the Minister of Marine and Fisheries renewed his motion in the same terms, I think, as in 1872, but it was withdrawn. In 1875 he again brought up the resolution, at page 188 of the Votes and Proceedings, and this time the Privy Council had determined the question. Then it was brought before them *ex parte*, and at the time when the Minister of Marine and Fisheries brought this question up that I am now referring to, it was in the position that it is at present, that is to say, the law was understood, for the question came up in this way : The Minister of Marine moved the resolution in 1872, at page 166, and then it is followed by the amendment of Hon. Mr. Gray, and then by Hon. Mr. Chauveau's amendment in amendment, that all the words after "that" in the original motion be expunged and that an humble address be presented to Her Majesty praying that she may be pleased to cause an Act

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to be passed to amend the British North America Act. That seems to be exactly what Mr. Chauveau moved in 1872. Then upon that, the vote for alteration in the British North America Act was 34 to 126 against, and that appeal to an alteration seems to have been opposed by the leaders of both parties—I do not think the present Prime Minister voted, — but Mr. Blake, Mr. Costigan, Mr. Alexander Mackenzie, Sir John Macdonald, Mr. Joly and Sir Charles Tupper voted against it. Mr. Costigan's motion was brought up on the 18th of March, 1875. Mr. Costigan's motion was in the same words as originally. Then, Mr. Mackenzie moved in amendment that :

“In the opinion of this House, legislation by the Parliament of the United Kingdom encroaching on any powers reserved to any one of the provinces by the British North America Act, 1867, would be an infraction of the provincial constitutions, and that it would be inexpedient and fraught with danger to the autonomy of each of the provinces for this House to invite such legislation.”

Mr. Cauchon moved in amendment :—

“This House regrets that the School Act recently passed in New Brunswick is unsatisfactory to a portion of the inhabitants of that province, and hopes that it may be so modified during the next session of the Legislature of New Brunswick as to remove any just grounds of discontent that now exist.

“That this House regrets that the hope expressed in the said resolution has not been realized.

“That an humble Address be presented to Her Most Gracious Majesty the Queen embodying this resolution, and praying that Her Majesty would be graciously pleased to use her influence with the Legislature of New Brunswick to procure such a modification of the said Act as shall remove such grounds of discontent.”

That motion being put was lost on a division of 60 to 124.

A further debate arising, the House continued to sit until midnight. The House divided on the question, resulting in, 114 yeas and 73 nays. Mr. Baby then moved in amendment to the main motion as amended, that all the words after “that” be left out and the following inserted in lieu thereof :

“This House regrets that the position of the Roman Catholic minority in the province of New Brunswick with regard to their educational rights is such as to cause great dissatisfaction to a large portion of Her Majesty's subjects in the Dominion :

“That this House is of opinion that any legislation which will restore harmony among persons professing different religions, and remove any feeling of uneasiness now existing among any portion of Her Majesty's subjects, is greatly to be desired :

“That by resolution passed by the House of Commons on the 30th May, 1872, it was regretted that the school Act recently passed in New Brunswick was unsatisfactory to a portion of the inhabitants of that province.”

He terminated by moving that an humble Address be presented, and so on. The Speaker ruled this out of order. The question then being put on the amendment as amended, it was agreed to, 121 yeas to 61 nays. The question being put on the main motion as amended, it was agreed to, 119 yeas and 60 nays. Then Mr. Costigan moved in amendment, that the said committee be instructed to add the following to the proposed address :

“But this House reserves to itself the right to seek by Address to Her Majesty, an amendment to the British North America Act, 1867 ; should the present motion prove insufficient to bring about an amendment of the New Brunswick School law satisfactory to the minority of that province.”

The Speaker ruled that amendment out of order. Then the address was as follows :—

“That in the opinion of this House, legislation by the Parliament of the United Kingdom encroaching on any powers reserved to any one of the provinces by the British North America Act, 1867, would be an infraction of the Provincial constitution, and that it would be inexpedient and fraught with danger to the autonomy of each of the provinces, for this House to invite such legislation.”

That on the 29th day of May, 1872, the House of Commons adopted the following resolution :—

"This House regrets that the School Act recently passed in New Brunswick is unsatisfactory to a portion of the inhabitants of that province, and hopes that it may be so modified during the next session of the Legislature of New Brunswick, as to remove any just ground of discontent that now exists ;

"That this House regrets that the hope expressed in the said resolution has not been realized. That we most humbly pray that Your Majesty will be graciously pleased to use the influence of Your Majesty with the Legislature of New Brunswick to procure such a modification of the said act as shall remove such grounds of discontent."

It was ordered that the said address be engrossed.

Now, the debate that took place on that address, to be found in the *Hansard* for 1875, and more especially the speech of the then Premier and the present Premier, are well worthy of consideration, I mean on this motion of Mr. Costigan. The substance of Mr. Mackenzie's remarks is that he regretted very much the legislation of the province of New Brunswick, depriving the Catholics of any portion of their privileges. But he said this, as will be found on page 610 of the *Hansard* of 1875 :—

"But, Sir, there is a higher principle still which we have to adhere to, and that is to preserve in their integrity the principles of the constitution under which we live. If any personal act of mine, if anything I could do, would assist to relieve those who believe they are living under a grievance in the province of New Brunswick, that act would be gladly undertaken and zealously performed ; but I have no right—this House has no right—to interfere with the legislation of a province when that legislation is secured by an Imperial compact, to which all the parties submitted in the Act of Confederation. So soon as the majority of the people of New Brunswick, so soon as the Legislature of New Brunswick, shall see fit to make such arrangements as will remove the cause of discontent, I am quite satisfied that province will find it to its advantage to do so. It is unfortunate that in any province of the confederated Dominion there should be any cause for complaint when precisely the same privileges are enjoyed in the large and most prosperous provinces, and while I feel bound to move an amendment to the hon. gentleman's motion which will place on record my views of the Federal compact and the obligations that rest upon us in connection with it, I shall, at the same time, gladly accord my support to any course which, in the opinion of Parliament—if it corresponds with my own opinion—will tend in any way to further the object that the minority in New Brunswick have in view, that is, to obtain the same privileges and rights that they enjoyed at the time of entering the Union, and which they supposed they were entitled to under the compact. Sir, I have no intention to discuss this matter further, because I conceive that it is quite sufficient to make the remarks I have offered, to indicate my own personal feelings, and to indicate the course that I propose to take. I have merely to say this, whatever may be our religious proclivities or feelings, whatever may be the feelings which actuate us in relation to local grievances, it is not well that we should endanger the safety of any of the provinces in relation to matters provided for in the British North America Act, which is our written constitution. Sir, it must be apparent to every one that if we were to attempt violently to lay hands upon that compact for the purpose of aiding a minority in New Brunswick who have a grievance, no matter however just that grievance may be—and from my point of view I think it is one they have a right to complain of—however much we might entertain that feeling, we have no right to do anything that will violate our obligation to defend the constitution under which we live. I may point this out to honourable gentlemen in this House and to the country, that if it were competent for this House, directly or indirectly, to set aside the constitution as regards one of the smaller provinces, it would be equally competent for this House to set it aside as regards the privileges which the Catholics enjoy at this moment in Ontario."

Now, I point out the significance of these words, because that is just as much a part of the constitutional power of disallowance which is invoked, as was the power of the province of New Brunswick over the subject of education ; therefore, the language must be understood with reference to the well understood principles of the constitution

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under which we live. There could have been no violation in annulling that law, the violation was in interfering with the matter of education which, while it may have been disallowed, was one in regard to which it would have been a grievous wrong to the province, and fraught with serious consequences to the Dominion, if there had been any interference. Now, I think you, Mr. Premier, took a much stronger, and safer, and better ground. At page 616 I find you reported as follows:—

“ Mr. Bowell desired to offer a few remarks in explanation of the vote he was about to give. He intended to vote against the amendment of the hon. member for Quebec Centre, and for this reason: because he (Mr. Bowell) was opposed to the passage of any resolution by the House that would interfere in any way——”

That was the Address to the Queen. You agreed with the resolution of Mr. Mackenzie saying there should be no interference, but you declined to follow the addition, that which proposed to express regret that New Brunswick had not modified the law, and to ask Her Majesty to use her influence with the Legislature of New Brunswick to make a change.

“ He was opposed to any resolution by the House which would interfere in any way, directly or indirectly, with the legislation of the province of New Brunswick, or any other province upon any question, and if he understood the motion aright, it was similar in character to that which was proposed by the hon. member for Stanstead two or three years ago, which asked the interference of the Imperial Government. If the motion proposed by the Hon. First Minister, which raised a fair and square issue, had been put to the House without any milk-and-water amendment, he would have had great pleasure in voting for it.”

That is what you said, and you voted for the principle that the House should not interfere with the legislation of New Brunswick in the school matters of that province, but you would not adopt the words proposed to be added as a soothing syrup in connection with it, by asking the Queen to use her influence to interfere with the will of the province. Now, it will be in the recollection of the hon. gentlemen of the Privy Council that shortly afterwards the question of education in Prince Edward Island came up. They passed a school law in that island, and the strongest efforts were made to have it disallowed, when Mr. Mackenzie's Government was still in office. In a blue-book containing the school laws and other educational matters in Assiniboia, Prince Edward Island, the North-west Territories and Manitoba, including the judgment of the Supreme Court respecting the appeal from the minority in Manitoba, and printed by order of Parliament, you will find an account of the Prince Edward Island case, when petitions were presented, in substance the same as the petitions now before you. In the Minute of the Executive Council, in answer to these petitions, and to which I referred the other day, I find this language:—

“ The great principle that the public moneys shall not be appropriated for the purpose of teaching sectarian dogmas or creeds, is one which a large majority of the people of this province value very highly, and which they will not surrender without a struggle, commensurate with the importance they attach to the principle itself. It has been the underlying principle of our educational laws for years, and though attacked in many ways and from many quarters, has so far been preserved intact.”

Then Mr. Laflamme, who was then Minister of Justice, went into all the complaints which formed the subject-matter of the petition. His conclusions are all that I will trouble you with. He considered all the objections, and finally came to this conclusion:—

“ Great stress has been laid on section 15 as imposing an unjust tax upon the parents neglecting or refusing to send their children to the district school, thereby causing a deficiency in the average attendance, and leaving absolutely to the discretion of the trustees to determine the amount and to levy an assessment on the parties.

“ This provision I consider to be severe and giving somewhat arbitrary power to trustees in fixing the penalty and in the selection of offenders. It confers the power of levying an additional tax at the discretion of the trustees. The previous laws give the right to trustees to levy the amount of the deficiency on the district, which necessarily comprised those who complied with, and those who refused to submit to the law. If we

are bound to consider the right of regulating education as absolutely appertaining to each province, except where the privilege of establishing separate schools existed by law, it must be admitted that they have equally the right to attach to the provisions of such laws the conditions and penalties required to secure its object; however arbitrary or unjust the mode of enforcing it may appear, it would not seem proper for the Federal authorities to attempt to interfere with the details or the accessories of a measure of the Local Legislature, the principles and objects of which are entirely within their province."

This agitation began in 1875 and went on till 1877, and here again we find that both the great parties in the country seem to have adopted as their rule that there should be no interference in matters of this kind. I do not know how it can be better put, or more strongly, than it was by Sir John Thompson in the debate on this question in 1893. I read from *Hansard*, page 1793:—

"The principle had been well settled in this legislature time and again that no statute regarding education passed by a province ought to be destroyed by disallowance. On the contrary, if it were *ultra vires* of the legislature, that fact ought to be ascertained and established by judicial decision. I shall refer in a few moments to the precedents by which that was well laid down and well established. But it was obviously, from start to finish, a principle which would commend itself to the common sense of any government and any legislature."

Then, speaking of the case of Prince Edward Island, he said:—

"That case was obviously parallel to the New Brunswick case, as to the want of sanction of law for the privileges which Roman Catholics enjoyed at the time of the Union, and therefore the repealing Act was declared to be *intra vires* of the provincial legislature, and not to be interfered with. The complaint of the Roman Catholic minority of Prince Edward Island was as strong as the complaint from the province of Manitoba."

Then he quotes from Mr. Blake's speech, which I find in this same volume, page 1810. Mr. Blake's speech was quoted by Sir John Thompson with approval. Mr. Blake says:—

"Those members who have long been here will well remember the New Brunswick school case, which was agitated for many years, and in the course of which agitation, I hoped that some political aspects of that and of analogous questions were finally settled—settled, at all events, for the party with which I had acted, and for the humble individual who is now addressing you. I regard it as settled, for myself, at any rate, first of all, that as a question of policy—there shall be no disallowance of educational legislation, for the reason that in the opinion of this parliament, some other or different policy than that which the province has thought fit to adopt would be better."

Now, the reason I trespass on your time by making these quotations is this: that when you reflect for a moment on what is asked here, I think you will agree with me that the interference by the Council in this matter, an interference which is to give jurisdiction to Parliament, would be a greater violation, would be more humiliating, as I have stated already, to the province, than disallowance itself. Disallowance would mean merely that that particular statute is wiped out from the Statute-book, and the province would still be free to go on and re-enact that law, as we know that to have been done in the province of Ontario in the case of the Streams Bill, which was disallowed certainly twice, and was again re-enacted, but finally remained law. That gives time for consideration and reflection. It shows that the view taken by the central body and the view taken by the legislative body, are antagonistic. It enables the people of both the central and local bodies to have an opportunity for reflection and consideration, and ultimately, under our system, it is to be hoped that the right course will be adopted. But what are you asked to do here? You are asked to take the first step in the passage of a law, a law which, when passed, so far as the province is concerned, is absolute and irrevocable, and I venture to say so far as this Parliament is concerned, is absolute and irrevocable. The power of this Parliament is limited to pass such remedial law as may be necessary to carry out an order made by this government. Now, Parliament makes that remedial law, which cannot be interfered with by the local legislature, or even by

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Parliament itself. Under these circumstances the jurisdiction for exercising the power of control passes away, except that it resides with the Imperial Parliament.

Sir MACKENZIE BOWELL.—That is, that the Parliament of Canada cannot repeal or amend its own Acts?

Mr. McCARTHY.—Its own Act passed under this section.

Sir CHARLES HIBBERT TUPPER.—Of course, the local legislature could get into the same position in the event of disallowance if, in the event of a remedial order being considered likely to occur, they agreed to legislate.

Mr. McCARTHY.—Of course, if they legislated they could prevent all these happenings. What I mean is that if the local legislature refuses to carry out any order that is made here, then there is a power in the central body to pass it. But just as there is a power to pass that law, it is a power *ad hoc*, that power being exercised, it comes to an end.

Hon. Mr. OUMET.—Do you propose to cite authorities in support of that proposition?

Mr. McCARTHY.—I can give you the authorities if that would be of any service to the Council, on the equivalent question of powers.

Hon. Mr. DALY.—The *Globe* has given us authorities on exactly the same lines.

Mr. McCARTHY.—I can hand in authorities showing that when a power is given to a trustee to be exercised, and is exercised by the trustee, it is then gone and he cannot revoke it. I think the lawyers in the Council will agree to that. The question is whether this is not just an *ad hoc* power. Legislation with regard to education is given to the province, with that exception. Parliament had the power in 1871 to create a province; Parliament therefore had power to assign a certain portion of its authority over that territory which was then called Manitoba, reserving to itself this particular fragment of authority respecting education, and that being exercised, it appears to me that power is gone.

Sir CHARLES HIBBERT TUPPER.—I suppose it is hard to find a parallel case in a legislature?

Mr. McCARTHY.—You cannot find any.

Hon. Mr. IVES.—Do I understand you to say that in case a less measure of justice were given, it might be supplemented?

Mr. McCARTHY.—Yes, and I say so still. But you cannot withdraw. If you pass a remedial order in the terms of my learned friend's bill, and Parliament at the first session, did not go the whole length of that, there would then be authority in another session to implement so far as necessary, the measure, and only to that extent; in order to carry out the intention of the Governor's order. Now, can you imagine, with the feeling that exists throughout the Dominion with regard to provincial rights and the non-interference by the federal authority, anything more irritating, anything more calculated to disturb, and to create ill-feeling, and to destroy the harmony which should prevail, than the passage of a law in Ottawa, by this Parliament, for the purpose of settling educational matters in the province of Manitoba? Remember, it is not because you have the power to do it that it is always wise to exercise that power. Let us not forget that Manitoba was almost driven to the verge of rebellion a short time ago by the disallowance of her railway laws; let us not forget that Sir John A. Macdonald found it necessary to abandon that policy of disallowance which had been pursued for some years in regard to vetoing its railway bills which interfered with the general policy of the central government regarding the Pacific Railway. Don't let us forget that the act of the Imperial Parliament which imposed the Tea Tax was a valid and legal act, but it brought about the Revolution. The Imperial Parliament has power to pass laws for Canada, the Imperial Parliament is omnipotent wherever the British flag flies. Its power is not questioned, but what is questioned is the wisdom, and the propriety, and the statesmanlike policy of exercising that power. I speak with the greatest possible deference to this body, but I speak with all the strength of language that I can command, to warn you that you are now asked to take the first step in creating a line of difficulties which, I venture to say, the youngest man sitting on that council board will not live to see the end of. And all for what purpose? Why, Sir, in a population of probably 190,000 in Manitoba, there appears to be 10,000, or 15,000, or 20,000, if you like, who desire to continue the system of French and Catholic schools which was established

by an enactment passed when the legislature cannot be said to have been controlled by very great wisdom, as I do not think the intelligence of those few half-breeds can compare at all with the intelligence of the later settlers who have gone in; I say because these people passed that law is it pretended that the province is never to be at liberty to repeal it? When the province repeals it deliberately, shall a body come here and, *ex debito*, ask successfully that the Governor in Council shall annul the School Act and restore that which they, in their wisdom and justice, thought ought to be repealed? Now, I appear here representing not merely an individual but a province, who are seeking to do what they think in their judgment is best for themselves, seeking to work out their system under difficulties that we are not capable here, perhaps, of appreciating to the full. We cannot realize the enormous task which has been cast upon them of providing for the education of the people, not merely those from the older provinces of Canada, but the immigrants from foreign countries, whom they are endeavouring to weld together into a homogeneous population. Under these circumstances I venture to think that this Council will hesitate before they take a step which will limit or deprive the local legislature of this right. Let me remind you that this question is to be viewed, not in the light of the interests or feelings of the province of Quebec, or of any other part of the Dominion, but in the light of the interests, and welfare, and prosperity, and peace of the province whose law you are asked to change and to amend. Viewed in that light, and regard being had to the circumstances which I have had the honour to submit to the Council, I fully realize that I have not been able to grasp, in the time at my disposal, or to master the intricacies of this question, so fully as I would have liked, in order to present it properly. I ask the board to remember, that the last word has not by any means been said on this question of the education of the people of the province of Manitoba. Now, while my learned friend, Mr. Ewart, quarrelled with what he called a neutral system of schools, I want you to remember that there are just two systems, or three if you like. There is the denominational system—and, if you want a definition of that, you will find it in the case of New Brunswick, which appears in the official document I quoted from, showing what a denominational school is. I say that while my learned friend complained of this form of religious exercises which was prescribed by the advisory board, you will recollect that the Hon. Mr. Pelletier speaks in strong language of the preference on the part of his people for a system permitting religious instruction in schools, instead of the secular or godless system to which reference was made. Mr. Pelletier, in the speech from which I quoted yesterday, says

“Mr. Laurier declares that he would only settle the school question in case the schools were Protestant. If, therefore, he considers that the schools are neutral or without any religion he will do nothing. I have no hesitation in saying, gentlemen, that between the system of Protestant schools and neutral schools, both being had, the Protestant school is yet to be preferred to the neutral schools, from many points of view. In a Protestant school principles are taught to the children which Catholics do not admit. In the neutral school the child is made an atheist, and he is brought up in ignorance of God and of all those religious principles which should be inculcated into the minds of the young in order to prepare them for the battle of life. In the Protestant schools the children are taught what we Catholics believe to be errors, but they teach at least that there exists a God whom all should adore and to whom all should pray. The child is led into error in the manner of practising this belief in God, that he or she is directed towards altars before which, in our opinion, they should not kneel, but they are taught at least that their heart and their intelligence should regulate their existence in view of a future and immortal life. At each day they should bow the head under the beneficent influence of prayer, because faith and prayer are the two grand qualities of man. In the neutral school, where all religion is banished, doubt, scepticism and incredulity are prepared, and a population grows up without religion, which is the greatest of all evils. In the Protestant school children are taught that the truths of our religion are not applicable as we understand them, but the parents can, perhaps, counterbalance these theories received at school and correct the errors which may have taken root. In the neutral school it is taught to the child who has prayed at home that prayer is not necessary. Religious education for the child is the accessory and necessary complement of instruction. Therefore in the neutral school this principle is reversed, or it is





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rendered inapplicable. It has been asked why not speak of religion to children in their family, and speak to them of other things in their schools? and to it is has been added that common schools could be established for all creeds. This is impossible."

I read that as the best answer to the argument of Mr. Ewart in regard to the exercises of prayer that are in force in these non-sectarian schools. Therefore I conclude by saying that the schools, being non-sectarian by law—so that if they transgress that law they can be corrected by the courts, as the administration of any other law can be corrected—the schools being such as even Mr. Pelletier says are to be preferred to a secular system, being such as that a majority of the Roman Catholic children of Ontario are frequenting them, being of a character such as that, according to the highest mandate, the authority which all Catholics revere and respect, they are bound to send their children to them, is this school system of Manitoba to be disallowed and upset by an order from this Council? Now, I ask pardon of the Council if I make a personal reference, which I am very sorry indeed to be obliged to do. I have endeavoured to conduct my argument without any personalities, or without any reference to parties, or to the reasons of my speaking here in a representative capacity on behalf of the Government and the Legislature of Manitoba, but perhaps, without contradiction, this allusion that has been made by Mr. Ewart would be taken as an admission on my part that it was correct. He made a quotation—I do not know why he did not do it in a manly way, I do not know why he made it all. I do not know what my view has to do with this question, but on page 15 of his argument he quotes from a Dr. Morrisson, a gentleman whom I have not the honour of knowing, and who does not seem to know very much of what he is talking about. He says:—

"Anticipating the appearance of this question in the arena of federal politics, Mr. McCarthy and his Protestant Protective Association have entered upon a campaign of open hostility to the Roman Catholic church, her religion and members."

Now, I say there is not one word of truth in that from beginning to end. I am not connected, and never have been connected, with the Protestant Protective Association. This is not the first time I have disclaimed it. I never was even a member of the order of which you, Mr. Premier, was at one time, and perhaps still may be, a distinguished ornament. I have never had anything to do with any such body of men.

Sir MACKENZIE BOWELL—If you had, perhaps you would not have made the reference you did up west.

Mr. McCARTHY.—I never said one word against the order.

Sir MACKENZIE BOWELL.—No, but your information about it was wrong.

Mr. McCARTHY.—That may be so, but my father was a member of the order, and I would not like to say anything that would reflect upon him, or the order to which he belonged.

Sir MACKENZIE BOWELL.—I would like to have been there to meet you.

Mr. McCARTHY.—I am willing at any time to meet you on the stump or elsewhere. Now, I want to deny that I have entered on any campaign of open hostility to our Roman Catholic fellow subjects. I never yet, and I hope I never shall, make any charge or accusation against my Roman Catholic fellow subjects. I respect their right and acknowledge their right to their religion, just as I claim the right to exercise my own judgment as to what religion I shall follow. Therefore, it is a slander, and I am sorry my learned friend has seen fit to put it into a document which will be widely circulated; I regret still more that if he was determined to do it, he did not have the manliness to do it in a direct manner, instead of quoting the language of another. In conclusion I beg to thank the Council for your patient and attentive hearing. I certainly cannot complain of any want of attention and of respect for the gentlemen whom I represent—and I shall take care so to report to them; and whatever effect may be given to my arguments, they have had at the hands of this Council a most attentive hearing, and I thank you for your kindness in that regard.

Mr. EWART.—I do not think that I said, although so reported, "Mr. McCarthy and his Protestant Protective Association." I think what I did say was "Mr. McCarthy and the Protestant Protective Association." However that may be whatever I said I certainly did not intend to connect Mr. McCarthy with the Protestant Association. As

to the other part, I think that I could fully justify myself were this the proper place. However, I am very glad to take my learned friend's disclaimer that he has never shown any hostility to the Roman Catholic Church upon general principles, and I am sorry to say in partial justification of the language I used that certainly the Roman Catholics have taken his strenuous attacks upon the Jesuit Order, which is a very widespread branch of their church, as an attack upon their church. I do not think that if my learned friend were to take his little hatchet and cut off an important branch of a tree and afterwards deny that he hit the tree that he would go down to posterity as a shining example of heroic truthfulness, it seems to me that he would rather be taken as making some subtle distinction between the branch and the tree itself. However, I am very glad to hear my learned friend say that he does not intend to attack the Roman Catholic Church, and I would like his disclaimer to go further and say that he does not now intend to attack a very important branch of that church or again to charge some of the members of it with having poisoned one of the popes.

And now I come to Mr. O'Donohue's statement. He was asked for his credentials. He left hurriedly, I may tell the Council, and he was unable to get the credentials before he came away. His co-religionists feeling that possibly he might be asked for them, determined to rectify the matter, and called a mass meeting the second night after he left. They have sent them after him, and as he will not have an opportunity of addressing the Council again, I shall read those credentials for him :—

"On Thursday night at St. Mary's school a mass meeting of Catholics was held. Matters of importance were discussed, especially Mr. John O'Donohue's departure for Ottawa on the mission of testifying as a representative Catholic before the Governor in Council on the school case. Severe discussion ensued, and all present strongly denounced Mr. O'Donohue's posing as a representative Catholic. The meeting was unanimous in denouncing him. The secretary was instructed to draft a resolution.

"A resolution was then put, unanimously carried, and directed by the meeting to be wired at once to Mr. J. S. Ewart, Ottawa. The resolution as carried and sent to Mr. Ewart is as follows :—

"We Catholics of Winnipeg, in mass meeting assembled, resolveth herewith :

"Having heard of the departure of one John O'Donohue, a trustee of the Protestant school board of Winnipeg, for Ottawa, for the alleged purpose of testifying before the Governor in Council on the Manitoba school case, on behalf of the Government of Manitoba, and posing as a representative Catholic of this province ;

"And inasmuch as the said Government of Manitoba failed to contradict the aforesaid allegation, when questioned thereon, on the floor of the House by a member of the same ;

"That said John O'Donohue is not, nor never has been, a representative of the Catholics of Manitoba, on the school question, or upon any other question ;

"And that we strongly and emphatically repudiate any and all such enforced representation by him. Carried unanimously.

"(Signed)

"D. SMITH,

"Chairman.

"O'CONNELL POWELL,

"Secretary."

"Following the above considerable discussion ensued. It was then moved by J. J. Golden, seconded by Mr. Carroll :

"That we, the Catholics of Manitoba, again reiterate the fact that we are a unit on the question of having our own schools, and that there is no better proof of the same than that while paying our taxes to and supporting the so-called public schools, we have at the same time maintained our own schools for the education of our children. Carried unanimously."

"Moved by Mr. Carroll, seconded by J. A. Richard :

"Inasmuch as the Honourable Attorney General stated on the floor of the House,

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“He had always maintained that a large number of Roman Catholics did not agree with the proceedings taken in their name, and that a large number of them preferred the public school system to any other system.

\* \* \* \* \*

(After having read certain statistics purporting to show the illiteracy prevailing in Catholic countries.)

“It would be a shame and a disgrace to perpetuate such a state of affairs in this country. Taxes had been paid by Catholics for the support of schools under the old system, but those controlling the school had failed in their duty.”

\* \* \* \* \*

“He did not wish to say anything derogatory of any religious creed, but if the Roman Catholic clergy were allowed to override the people of this country the same undesirable condition would prevail here as in other countries where they predominate.

\* \* \* \* \*

“If the present school law compelled Catholic children to attend school and swallow Protestant religion (it would then take away a natural right of the Catholics). But the law did not do this, and having this fact in view the legislation was neither unfair nor ungenerous.

“We the Catholics of Winnipeg assembled here in mass meeting repudiate all such assertions, and at one and the same time characterize them as maliciously false or wilfully ignorant. Carried unanimously.”

These, gentlemen, are the credentials of Mr. O'Donohue. Now for his evidence. He tells us that the teaching in the French schools is bad. He does not understand French and he bases his opinion on what he heard or saw in those schools. It does not require words to displace testimony of that kind. He was however sent to curse and remained to bless; for he tells us that the convents are remarkably distinguished for the good education they impart to their scholars. Now, Mr. O'Donohue knows, (and I should not at all be surprised if it was the fact, with reference to two members of his own family) that almost all the female teachers in the Roman Catholic schools in Manitoba receive their education at those convents. These are the female teachers in Manitoba whom Mr. O'Donohue condemns, who receive their education in the convents where it is such that Mr. O'Donohue can recommend it, and he tells us that it is really better than the education given in the Protestant schools. Another part of his evidence is that there is a large number of the French half-breeds who are unable to sign their names. I do not know at all if the figures are accurate—for my part I am quite content to have it known that there are a great many who are unable to read and write. But what does Mr. O'Donohue draw from that—that these Metis who are unable to read and write have been to the French schools? I return to the charge upon the public schools. I say to my learned friend, that there are a large number of persons in Manitoba who cannot read or write—what do you think of your public schools? My learned friend would reply: They never went to our public schools. I say that they never came to our schools, and why do you charge up the illiteracy to us rather than to the public schools? Now what is the fact with reference to these French half-breeds? We have taken responsibility in connection with them and to the best of our ability we have discharged that responsibility. Who are these French half-breeds? They are more Indian than they are English or French, and a great many of them up to within the last few years could not speak either English or French. They were not those who have settled upon farms nor who had the benefit of parents who were educated such as the Scotch half-breeds who were educated before they came to us and settled on farms. They were not such people at all, but belong to the *coureur des bois*, the *voyageurs*, those restless individuals who until within the last few years hardly owned more than a wigwam or tent. They have now to some extent settled down. Prior to that the good fathers of the Catholic Church followed those roving bands and gave them such education as they could, and I say it redounds to the credit of those Catholic fathers if they have been able now to show such a result that twenty-five per cent of such roving bands are able to sign their names and carry on agriculture to such an extent as to deal with Mr. O'Donohue for implements.

My learned friend Mr. McCarthy commenced very good humouredly by warning the Council against my book because he said that I have had a long connection with this case and was probably very much prejudiced. Prior to his argument, I would have been quite prepared to admit that being only human I probably was very much prejudiced in this case, but after having heard my learned friend's address I am quite prepared in comparison to claim not only perfect sanity but the most perfect impartiality. My learned friend and I have been practising before the bar for a great many years now, before judges whose fundamental principle was that there never was a wrong without a remedy. It has been the boast of the Court of Equity that it implemented the common law system just because there were wrongs for which there were no remedies, but since the Court of Equity has been in operation, and that has been a great many years, the principle has been that there is no wrong without a remedy. But my learned friend seems to have got into a new region altogether, almost into another world, some place where two and two cease to make four. For the last twenty-five years my learned friend and I have been going before courts where we prove that we have a grievance and that the court has jurisdiction, and what do we get? We always get relief—for twenty-five years we never thought it necessary to prove anything further. Although I have listened to his able argument I have not found out what more we have to prove. We have a grievance and there is not a remedy. I say we have got into a region that I am not at all familiar with, and therefore I do not know that I shall be able to meet my learned friend's contentions. Adding two and two together do not now make four. What is the result?—nothing, in the region in which my learned friend has been arguing. He has gone further than that—not only may there be a grievance and the power to remedy, but no remedy, but he has taken the broader ground that where there is a power there may be no corresponding duty. For instance with reference to the very subject of disallowance we are speaking about, it would seem that there is the power to remedy, but there may be no corresponding duty to consider whether you are going to exercise that power or not; there may be some other principles which would actuate you in the matter. Now I desire to read the language of an authority equal to my learned friend, in which it is said:—

"I venture, sir, to ask the House seriously to consider the position in which we stand. The worship of what was called local autonomy which some gentlemen have become addicted to is fraught, I venture to say, with great evils to this Dominion. Our allegiance is due to the Dominion of Canada. The separation into provinces, the right of local self-government which we possess is not to make us less citizens of the Dominion, is not to make us less anxious for the promotion of the welfare of the Dominion; and it is no argument to say that because a certain piece of legislation is within the power of a local parliament, therefore that legislation is not to be disturbed." (That is as I have understood the purport of my learned friend's argument.)—"By the same Act of Parliament, by which power is conferred upon the local legislature the duty and power—because where there is a power there is a corresponding duty,"—(My learned friend will, I think, agree with that at all events)—"are cast upon the Governor in Council to revise and review the acts of the legislative bodies. If you are to say that because a law has been passed within the legislative authority of the province therefore it must remain, we can easily see, sir, that before long these provinces, instead of coming nearer together, will go further and further apart." (My learned friend has argued the other way.) "We can see that the only way of making a united Canada and building up a national life and sentiment in the Dominion is by seeing that the laws of one province are not offensive to the laws and institutions, and it may be to the feelings of another.—I will go so far as to say that they must be to some extent taken into consideration."

I am sure that everyone will be astonished to the last degree to know that that language is the language of Mr. Dalton McCarthy in the Hansard of March, 1889. It is a sound and just view, but two and two do not make four in the atmosphere in which we are to-day. What was the question under consideration. It was the Jesuit Estates Act, where it was thought there ought to be Dominion interference although no harm was done. Now having squared myself with my learned friend to some extent,

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although I hope in a manner not at all offensive to him, I wish to take up a few of the arguments which he has adduced here, and I shall trouble the Council with another reference to historical matters.

With reference to this historical argument the only point in dispute between my learned friend and myself is as to the fourth bill of rights. He did not point out anything wrong in my book, in fact he even referred to it, and I think that I proved in that book that the fourth bill of rights was the one referred to and I think I shall clear up any doubt about it. My learned friend proposed to prove by the "clearest possible testimony" that it was the third bill of rights that the delegates took down, and not the fourth. He commenced his argument under a complete misapprehension and I am sure it will be noticed by every one that he had to change his argument before he finished. His idea was this, that the third bill of rights was adopted by the council of 24 or the legislative assembly, then, having established that, as he thought he could, he was going to say that this fourth bill of rights was not before the council at all or the legislative assembly, that it was altered by the executive. That was the line he was pursuing; but I corrected him and pointed out that neither bill had been before the assembly and he forthwith changed front, and he asked you to assume that it was the third bill of rights that the Council had prepared and that someone had afterwards altered it. No bill of rights was before the legislative assembly, and the only question is, then, whether it was the third or fourth bill of rights that was prepared by the executive of that legislative assembly. He asserts that the third bill of rights was prepared and was afterwards altered, but for that assertion he has nothing but the witness of two individuals, and I wished to point out the extent of their evidence. The first one is Mr. Begg, and it may be sufficient to displace all his authority to say, that although writing in 1894, he never heard that there was any discussion as to whether it was a third or fourth bill of rights. He never pretended to investigate that question and in fact in an interview that I had with him he so admitted. The only other testimony he offers is that of Mr. Taylor, who says that he saw a copy of this bill, but whether it was the same bill, we do not know; so that statement may go for what it is worth. Now, that is the whole evidence of my learned friend. His great mistake was in adopting, from the language of a pamphlet that was written before my book, the statement that the fourth bill of rights was never heard of until 1890, and he says significantly, that is just the time when it was wanted; that it was produced in 1890 when it was wanted in the interest of these separate schools. He says it was never heard of before then. My learned friend did not listen to what I had stated and proved in my opening plea, that the original of this fourth bill of rights—

Mr. MCCARTHY.—The affidavits were withdrawn, and you cannot refer to them now.

Mr. EWART.—I did not withdraw, however, the certified copy of that bill of rights produced from the Department of Justice, and that copy of the bill of rights has been in the Department of Justice no less than 16 years prior to "the first time when it was even heard of." This fourth bill of rights was first heard of in 1870, and it is now of record in the Justice Department, as having been put in at the Lepine trial, which was the most celebrated trial that ever took place in Manitoba, as early as 1874, and put in with evidence proving that it was the original bill of rights.

Sir CHARLES TUPPER.—Who put it in at the trial?

Mr. EWART.—I think it was the defence.

Mr. MCCARTHY.—You must produce a certified copy.

Hon. Mr. DICKEY.—It is not printed.

Mr. EWART.—It ought to be printed, all the affidavits ought to be printed. Now there was another point in my learned friend's argument where, as it seemed to me, that the Mr. McCarthy whom I have known for a great many years, and have always admired, not only for his great legal and political attainments, but for his unimpeachable integrity—where it seemed to me that Mr. McCarthy had got away from himself to-day; because I cannot imagine that Mr. McCarthy, under the influence of anything but some overwhelming passion or dominating prejudice, would have referred to these pledges and promises which I produced and proved here—I do not mean by affidavits, but in other ways—in the slighting way that he has referred to them. For instance, with reference

to the compact made at the time of the union of Manitoba with Canada, when a great treaty was made by which half the territory that Canada now possesses, was added to its domains, although that treaty was made under Imperial sanction and under the view and direction of Imperial officers, although he admits that "the minority perhaps, had a right, under the circumstances, to expect a different state of things" from that to which they are subjected to-day, my learned friend, instead of meeting my argument, and saying directly, no, there was no such compact, has said in this technical fashion, It is not in the bond, and we must be governed by the exact language.

Mr. McCARTHY.—What agreement?

Mr. EWART.—The compact in the Manitoba Act.

Mr. McCARTHY.—I do not quite understand you.

Mr. EWART.—The Manitoba Act is the agreement. My learned friend does not deny that we have on record the view of Sir John A. Macdonald (who was the negotiator of that treaty) that separate schools had been obtained for the new territory. He can see for himself that it was the opinion of their Lordships of the Privy Council, indicated clearly enough, that such was the intention. What they say is that the draughting is defective,—that they cannot say that the intention was put in clear language. My learned friend knows that in the course of his practice, dozens of agreements have been reformed on account of defective draughting, but he has never raised against an application to reform them such an argument as he has raised with reference to this compact, that because the draughting was badly done, therefore the agreement, when its intention is known and ascertained by direct testimony, should not have its agreed force. That is all my learned friend has to say. He advises you to take the advice of their Lordships of the Privy Council, who say it is better to be governed by the exact words. No doubt a court of law has to do that, but when my learned friend advises you to do what a court of law does, when he advises Parliament to do what a court of law does, to be bound by its own language when it knows that that was not its own intention, then I say he is giving you bad advice.

Then, with reference to one of the other contracts, to one to which Mr. Greenway was a party, he interposes a denial by telegram, and says that Mr. Greenway has denied it. Referring to the interviews Mr. Greenway had with the Reverend Vicar General, first at the Archbishop's palace and in the following morning at Mr. Alloway's office, my learned friend interposes, I say a denial. Mr. Greenway has denied that before. He has given a general denial to the whole statement, but he has never denied, and dare not deny, that he did pay a visit to the Archbishop's palace, and made an appointment with the Vicar-General for the next morning in Mr. Alloway's office to get his answer, and that in pursuance of what was done there, Mr. Prendergast joined his administration. Mr. Greenway never attempted to deny that, and if he does, I will prove it by a sheaf of affidavits. My learned friend has interposed again a technical objection to the other promises that were made. He cannot deny them, for they never have been denied. As to the first, when the French Catholic members assented to the abolition of their great safeguard they had in the Senate, my learned friend's criticism now is that what they were particularly thinking of at the time, was not the schools but the French language. But there is no doubt that the language of the promise covers the schools as well as the French language, and that the promises given were wide and general in their terms. My learned friend says, as a technical objection to that, Why, what business had these people to make those promises? They were the representatives of the people in the legislative assembly asking the French members to give up a safeguard which they had. My learned friend says, Yes, they made those promises, but those whom they represented on that occasion are not to be bound by them, there was no mandate to make those promises. I do not pretend that, as a matter of law, if we had the signature of every individual in Manitoba at that time to these promises, they would be legally binding upon the parties. I cannot say that; I cannot even say that if the province had declared by an act of the legislature so and so, that would be binding. His objection goes no further than this, that technically they were not legally bound. I admit that, but still I dare say that the Mr. McCarthy, whom I have known to this date, has never interposed objections of that kind, to his own promises, or to those of his friends. Then with reference to Mr. Martin's pro-

mises, promises he was authorized to make by the Liberal party, my learned friend interposes the same objection, he says that Mr. Martin was not authorized to make that statement. Now, I do not pretend to say that the Liberal party was absolutely bound by what Mr. Martin said on that occasion; but I would put it to the Liberal party, and ask if they are going to act upon principles of that kind? I do not think my learned friend would have a very high opinion of them; I do not think he would predict for a party that acted upon principles of that kind, a long lease of life. It would be impossible, I am glad to say, for any political party to live two years in Canada and have anything of a respectable following, which laid down as a principle that they could make promises in profusion at the polls, but the moment they were returned to power they could break them. Now, I ask the Liberal party, if they are prepared to accept such principles, if they are prepared to adopt the view that their lieutenants and their leaders may go before the people at a critical election, and obtain power by virtue of those promises, and then turn round and say they were not authorized. It seems to me all these promises have a direct bearing upon the petition we are arguing here to-day. It seems to me that if we can prove, not only that we have had rights, and have lost them, but that we have been tricked out of them, that is a very strong argument for their restoration, and for giving a lesson to the tricksters.

I do not intend to follow my learned friend very far in his long discussion as to whether this Council is sitting now as a judicial body or not. If I were to say anything, it would be nothing more than this, that I should think that one could not either affirm positively that they are acting as a judicial body or a non-judicial body. I should think that in some senses they are judicial, in other senses they are not. But, I would say that they have to proceed in this matter in a judicial manner, and they have to bring to bear upon it a judicial spirit. There is a grievance here, there are complaints and there are defendants. We come before you as an appellate jurisdiction, with our grievance in the shape of a complaint,—by a complainant complaining against a respondent. I think therefore you should proceed in this matter in a judicial spirit, to investigate the complaint upon the lines justice, and fairness, and reasonableness demand, and to decide upon the line of duty, not upon the line of mere political expediency as to what you should do under the circumstances. I may be permitted to read here a quotation from a speech of Mr. Blake, where he says:

“But, Sir, besides the great positive gain of obtaining the best guidance, there are other, and, in my opinion not unimportant gains besides. Ours is a popular government and when burning questions arise inflaming the public mind, when agitation is rife as to the political action of the Executive or the Legislature—which action is to be based on legal questions, obviously beyond the grasp of the people at large;—when the people are on such questions provoked by cries of creed and race, then I maintain that a great public good is attainable by the submission of such legal questions to legal tribunals, with all the customary securities for a sound judgment; and whose decisions passionless and dignified, accepted by each of us as binding in our own affairs involving fortune, freedom, honour, life itself are most likely to be accepted by us all in questions of public concern.”

This language seems to me to afford a strong reason for adopting the suggestion, I might almost say, the ruling, of their Lordships of the Privy Council. My learned friend has, perhaps, properly characterized what they have said in some portion of their judgment as *obiter*, that is, that what they said was not absolutely necessary in order to give answers to the questions that were put to them. Nevertheless it seems to me that Mr. Blake's language affords a good reason for being influenced by what their Lordships have said, and for adopting the suggestions which they have made.

Mr. Ewart here suspended his argument until to-morrow.

Mr. McCARTHY.—I beg to refer the hon. gentlemen of the Council to chapter 25 of 54 and 55 Victoria, which is the Exchequer Court Act. I draw you attention to the fact that an act of Parliament is merely advisory.

At 4.30 p.m. the Privy Council adjourned.

OTTAWA, March 7, 1895.

The Privy Council met at 11 o'clock a.m.

*Present*.—Sir Mackenzie Bowell, Sir Adolphe Caron, Hon. Mr. Costigan, Hon. Mr. Foster, Hon. Mr. Haggart, Hon. Mr. Ives, Hon. Mr. Ouimet, Sir Charles Hibbert Tupper, Hon. Mr. Daly, Hon. Mr. Angers, and Hon. Mr. Dickey.

Mr. EWART.—Before commencing my reply to Mr. McCarthy's arguments, I think it would be well that I should summarize what, in my opinion, those arguments were. It seems to me that he had nine of them, and I would like to state them, because I intend to take them up and answer each in detail, and I hope satisfactorily to all. His first argument was that there should be no coercion of a great province, more particularly when, by so doing, its jurisdiction would be taken away, and still more particularly in a local matter. His second argument was that separate schools were bad in themselves, and there were various sub-headings under that one heading. The third was that the present schools in Manitoba were non-sectarian, and therefore unobjectionable. His fourth was that Catholics can and do send their children to the public schools, instancing such cases both in Ontario and Manitoba. As a fifth argument, he gave us a history of the school case for the purpose of showing that Manitoba is not only a unit upon this question, but that it had proceeded with the greatest deliberation possible. He then said that before the Council could interfere, it would have to come to the conclusion that a separate school system was the best possible system, or at all events, preferable. As a seventh argument, he defined national schools and gave some reasons for approving of them. His eighth argument was that the New Brunswick case showed that the determined and settled policy of the Parliament of Canada, was non-interference in matters relating to education; and his ninth argument was that, at all events, there are very few Catholics in Manitoba, and the injustice therefore cannot be very great. Commencing with the first, namely, that there should be no coercion of a great province, at all events, in purely local matters, and by the offensive method of appeal, I say that is not the true way to present the case before the Council. What we are complaining of is coercion, and what we ask the Council and Parliament to do is to stop that coercion. My learned friend pleads for liberty for the people; that is what we plead for. My learned friend has mistaken the position. It is we who are pleading for liberty for the people, liberty to have their own schools conducted in the way their consciences dictate. My learned friend says, No, let Manitoba coerce all these people and dragoon them by force, by applying one screw after another, to come into line and send their children to schools which their consciences disapprove. He argued that in no possible case ought the Dominion interfere. I ventured to quote, against that position, his own language. I would remind him, further, that that has not been the practice, and that that has not been the policy with reference to the important subject of disallowance. For instance, in the Ontario Streams case, a case with which my learned friend, I think, was professionally identified, he succeeded in getting the Dominion Government to intervene three times, upon this principle—as can easily be found by reference to the record—that vested rights should not be interfered with; that individual property was there taken away without compensation; and the principle was then laid down distinctly, and it seems to me in accordance with justice, that where vested rights are taken away, that where flagrant injustice is found to have been done, that where it is made clear that the province is coercing and improperly interfering with the rights, even of one single individual, that is a case for interference by the supreme authority vested in His Excellency in Council. Then the Jesuit Estates Act, although there was no interference in that case, proceeded upon precisely the same principle. It was not doubted that if there was a case made out for interference, as in the case of the Streams Bill, a case where vested rights were taken away and an injustice done, there should be interference. But we all remember that it was said, Why, nobody is complaining of this. Nobody knew anything about it until some gentlemen in Toronto pointed out to them that there was some hidden injustice in the Act. So far as the Protestants in Quebec were concerned, the Act was passed without complaint;



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and afterwards, when certain points with reference to the Act were brought to their attention, they asked the Government to amend them, and they were amended. Now, I say that these two cases proceeded upon the same principle, namely, that when a grave injustice is done, a case for interference is made out.

But my learned friend says, in answer to all that, and in answer to what I have read from his own speech, that that will apply to every case except education. I think it would be interesting to take his language, and while reading it, to make the exception that he suggests. I am sure when I have finished, that, while he will still say that the principle he laid down would be a very useful one for this occasion, it is one that I think, he would be heartily ashamed of :—

“The worship of what is called local autonomy, which some gentlemen have become addicted to, is fraught, I venture to say, with great evil to this Dominion—except in connection with education. Our allegiance is due to the Dominion of Canada—except in relation to education; the separation into provinces, the right of local self-government which we possess—except in relation to education,—is not to make us less citizens of the Dominion, is not to make us less anxious for the promotion of the welfare of the Dominion—except in connection with education, and it is no argument to say that because a certain piece of legislation is within the power of the local parliament, therefore that legislation is not to be disturbed—except in connection with education. By the same Act of Parliament by which power is conferred upon the local legislature, the duty and power—because where there is a power there is a corresponding duty—except in cases relating to education—are cast upon the Governor in Council to revise and review the Acts of the legislative bodies—except in cases relating to education. \* \* \* If you are to say that because a law has been passed within the legislative authority of the province, therefore it must remain—except in relation to education—we can easily see that before long these provinces, instead of coming nearer together, will go further and further apart—unless it be in cases relating to education. We can see that the only way of making a united Canada and building up a national life and national sentiment in the Dominion, is by seeing that the laws of one province are not offensive to the laws and institutions, and it may be, the feelings of another—except in matters relating to education.”

Now, he was wrong in saying that his language had no reference to education. It was laid down as a general principle, a principle with which I think all reasonable men will agree; but he says now that it had no reference to education. Why did he speak of it then with reference to the Jesuits Estates Act? That, it seems to me, had something to do with education; the lands were set apart for educational purposes; and one of the questions debated with reference to the Jesuits Estates Act, was the assertion that the money was not properly applied to education, but was left to the disposition of His Holiness of Rome. And why should we make an exception with reference to education—of all things in the world? Why single out education? Because the constitution, the very clause of which we are debating here to-day, provides specially for education? My learned friend says there should be no disallowance, there should be no interference in any case, except with reference to education. And why not, when the constitution makes particular reference to that very subject, and a particular provision for interference upon that subject? I would suggest to him that there is another subject that he may much better except from the generality of subjects, than education, and that is finance. Is the Dominion to interfere with provincial finances? I should think a much stronger case could be made out for finance than for education, if any exception is to be made, and the Jesuits Estates Act was a matter relating to finance.

Mr. McCARTHY.—Your bill proposes to interfere with local finances.

Mr. EWART.—No.

Mr. McCARTHY.—Yes, you say that the grant for educational purposes should be divided.

Mr. EWART.—What we say is that we want to be restored to the enjoyment of the rights we had before they were taken away.

Then my learned friend says this is a drastic way of interfering, one that would be objectionable to the local legislature. I cannot see that disallowance seems to me more objectionable than interfering in any other way, when there is a jurisdiction over the

subject. In the case of disallowance, there is simply destruction. My learned friend says that it may lead to reconciliation. Well, that is not our experience so far. So far from disallowance leading to reconciliation, it leads to heartburnings and to re-enactment of the statute. I cannot see why there should be any objection on the part of the province to the exercise of jurisdiction here. If the province were supreme in this matter, if the province had exclusive jurisdiction in this matter, then I could very well understand that the province would say, This matter is within our jurisdiction only, keep your hands off. But when it is not such a case, when the jurisdiction is here according to the constitution, what grounds have they for argument? Apart from the constitution, of course, you can argue anything you like; but what ground for complaint have they, under the constitution, that the Dominion Government or Parliament should interfere? The Supreme Court at Ottawa undertakes, under Dominion legislation, to interfere with the decisions of our own courts. What business have they to do it? The reply is, That is the constitution, and if you don't like it, of course, agitate and get it changed.

My learned friend says that if the Parliament of Canada passes an act, such act remains for ever, it can never be undone. I do not agree with him on that point. But if he is right, it seems to me that it is an argument that ought to apply more to the Provincial Government, to the Provincial Legislature, than to the Dominion authorities. It seems to me that his argument means this, Don't remedy this wrong that has been done because, if you do, you cannot take away that remedy afterwards: that is, let this grievance remain unremedied, because if you apply the remedy the remedy is going to remain. Now that seems to me an extraordinary argument. It may be an argument to apply to the local legislature:—You are losing your jurisdiction. But I do not agree with him that Parliament would not have power to repeal. If you will allow me, I will make a suggestion how to obviate all difficulties. The Dominion could pass a statute for a limited time and then it would run out. That is one way of relieving the difficulty. That, however, would not suit us at all, because we might have just as bad a government at the end of 10 years as we have now. Then, there is another suggestion. The Dominion Parliament could pass an Act which would be in force until repealed, and as soon as it was repealed, it would cease to have force, not because of the repeal, but because of the provision in the original statute.

Hon. Mr. HAGGART.—Do you mean to say we could assume jurisdiction for ever by putting in a clause of that kind, that we preserve the power always of repealing it afterwards.

Mr. EWART.—Yes, of repealing the statute afterwards.

When he says that this is purely a local matter, I cannot agree with him at all. It does not seem to me at all to be a matter of indifference to the whole Dominion, that the principle of coercion should actuate legislation in Manitoba, and whether vested rights are to be interfered with there or not. It seems to me Canada is interested in the progress of Manitoba, as of every other province, and an injustice there cannot be tolerated without injury to the whole. Suppose, however, that it is merely a local matter, then, the only complaint is that under the constitution the local legislature is not supreme. I would like to point out that the local legislature is more supreme over its local affairs than is any state in the Union. No state in the Union has power to take away vested rights, but the province of Manitoba to-day has more power with reference to vested rights—and that is what we are dealing with here—than has any of the States; and yet Manitoba objects and says she has not got power enough. I say that the only objection is with the constitution, if it has not given her greater power than any state in the Union. In the States such legislation is *ultra vires*; here, however, the province has power to pass legislation, subject, not to be declared *ultra vires*, but to be overridden by the better judgment of Parliament. There are a variety of local matters, however, other than these which are provided for in the constitution, that are beyond the powers of the local legislature. For instance, there is one that, if it were in force in Ontario, I think my learned friend would have pointed it out long before now: there is one with reference to Quebec, namely, that Quebec is utterly unable to alter twelve of her own constituencies; she is prohibited from doing that by the British North America Act. What is more absolutely a local matter than arranging constituencies for the

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Legislative Assembly? yet the province of Quebec cannot do it. And why not? Because it was so provided for the protection of the Protestants in the province of Quebec. That was not to be done, and they have never attempted to do it, and of course they are not going to do it. I say that there is a local matter, and yet the province has not supreme power to deal with it; because such is the constitution. No province is supreme in reference to matters relating to agriculture. Any province may pass a law with reference to agriculture, but the British North America Act gives power to the Dominion to override any such law. What is more local in its nature than a matter relating to agriculture? Yet, that is the constitution, we are bound by the constitution, and we cannot get away from it. Now, I wish to point out that at the time of Confederation this subject was brought up for discussion, and this power of disallowance was discussed at great length. It was suggested that the provinces should not have power to take away vested rights within those provinces. It was foreseen that in the provinces, some of them very immature, there might be an interference with vested rights, and a great injustice done; but it was thought better to reserve the disallowance power for the central authorities. I do not wish to trouble you with long quotations from the debates, but I will give you merely a citation from Mr. Clement's book on the Canadian constitution, page 173:—

"Throughout the debates it was clearly recognized that the exercise by the Dominion Government of the power of disallowance was to be exercised in support of federal unity, *e.g.* to preserve the minorities in different parts of the confederated provinces from the hands of the majorities."

Now, my learned friend used an argument—I think it was suggested by the Secretary of State—that if the Roman Catholics were in the majority in Manitoba, and they provided for public schools according to their way of thinking, ought the Dominion to interfere? He says, No, if there was a conscience clause for the benefit of Protestants. There would be a case, he thinks, if the Roman Catholics did what the Protestants have done here, unless the Catholics provided for the conscience of Protestants.

Mr. McCARTHY.—No, you did not understand me. If they established denominational schools, which I do not admit, and deny that they have been established here.

Mr. EWART.—If they established schools according to their way of thinking, of course they would be denominational schools, and if they did not provide for the conscience of Protestants, then there ought to be interference; and yet we have here a system of schools with no provision for the conscience of Catholics, and there ought to be no interference! It shows the different ways one can look at the same thing.

His next argument is that separate schools are bad, and he gives quotations. I do not pretend to dwell long upon them in reply. He argued that the dogmas taught in the denominational schools violated the principle of the separation of church and state; yet he himself advocates the teaching of religion in schools where the population consists, as he read, of Icelanders, Mennonites, Polish Jews, French, Hungarians, Finlanders, and Gaelic-speaking Crofters, besides Protestants and Catholics. I hope he may never be asked to formulate a religion which is going to be suitable to all these. He says that separate schools are injurious to unity, and he quotes from Dr. King to that effect, a gentleman who, while advocating unity for the Catholics, has been for many years engaged in conducting a separate school, although of a voluntary character, which has for its object the withdrawal of Presbyterians and others from the common schools.

Then his contention with reference to separate schools is that they produce illiteracy. I have never been able to understand at all how it is that illiteracy is connected with church government or any other government of schools. I can very well understand that it has some bearing upon the character of peoples; it may have some bearing upon their character in this way, that some nations may not be so anxious for education as others. But I cannot see how it has any bearing one way or another upon the question, Which is the best system of schools?—because none of those schools produce illiteracy. It is not charged by my learned friend, or any one else, that if people go to those schools, or schools of any kind, they come out illiterate. He has given a good many statistics for the purpose of showing that in Catholic countries illiteracy does prevail. Now, he does not pretend that that is because of the Catholic

religion ; because he admits that in Belgium, which is almost entirely Catholic, illiteracy is almost unknown. He does not pretend, either, that it is because the schools are under church government.

Mr. McCARTHY.—Yes, that is what I do pretend.

Mr. EWART.—Well, if he does, all I can do is to refer him to England where, until 1870, all the schools were under church government, and more than one-half of them are under church government to-day. I do not think he will undertake to say that England is an illiterate country. However, I do not at all admit those statistics, which he says have been so carefully compiled. There have been handed to me some other statistics, which I will take the liberty of reading, and which, perhaps, are more accurate than those given by my learned friend. I have here a statement of the attendance at schools in different countries. In Norway, Sweden and Denmark, where the population is almost entirely Protestant, the attendance is 14 per cent. In the United States, where there are 51,000,000 Protestants and 9,000,000 Catholics, the attendance is 13 per cent. In Great Britain and Ireland, where the proportion of Protestants to Catholics is  $29\frac{1}{2}$  to  $5\frac{1}{2}$ , the attendance is 12.3. In France, where the population is almost entirely Catholic, except the 4,000,000 that are put down as having no religion, and they are omitted from calculation, the attendance at school is 17 per cent, more than 3 per cent higher than any other country in the world. In Austria, which is almost entirely Catholic, having 20,000,000 Catholics to 400,000 Protestants, the attendance is 13 per cent, or about that in the United States. In Spain, which is almost entirely Catholic, the attendance is 10.6; in Italy, which is almost entirely Catholic, it is 9 per cent. So that these figures prove how foolish it is to rely upon statistics of this kind to support an argument for the purpose of founding legislation upon it.

Mr. McCARTHY.—If both sets of statistics are correct, what is the explanation of the fact that the larger the number attending schools, the larger the number who come out illiterate ?

Mr. EWART.—The answer to that is that your statistics are all wrong.

Mr. McCARTHY.—That is not an answer.

Mr. EWART.—I think that is the best answer, and needs no other.

Mr. McCARTHY.—My statistics are taken from the Statesman's Year Book.

Mr. EWART.—Your statistics, even if they be true, do not prove anything with reference to education. My learned friend might as well argue, but perhaps the argument would come better from me, that the Protestant religion is unfavourable to art, to painting, to music and things of that kind. As a proof of that I would contrast England with Italy. I would say, too, as another proposition, that Protestantism was altogether unfavourable to culture of manners, politeness and so on, and I would refer him to England and Germany as against all the Catholic countries in the world. He would have to admit those facts, but he would not be willing to admit the deduction I draw from them. In the same way, when he says that in Catholic countries, his statistics show a certain amount of illiteracy, I tell him that all they prove is that the southern nations are not so eager for education as are northern nations. When he goes amongst northern nations he will find a Catholic nation like Belgium, eager for education, and well educated. The line he has drawn is not between Protestantism and Catholicism in their bearing upon education, but the line is between northern nations and southern nations.—Anyone who knows anything at all about ethnology knows that these peoples differ in many respects, even upon the question of education.

Mr. McCARTHY.—Quebec is further north than Ontario.

Mr. EWART.—I think the only fair way to test a matter of that kind is to take the two systems under the same circumstances. Take them with the same environment and at the same period. For instance, let us take the separate schools and the public schools in Ontario. There we have the same kind of people, at least largely the same kind, living in the same country, subjected to much the same influences; and yet the Year-Book for 1893, to which my learned friend goes for his statistics, also tells us that the attendance upon the separate schools is about 5 per cent larger than in the public schools, and the cost is less. I think that is the only fair way to make the comparison.

Then he has another argument against separate schools. He quoted statistics to show that amongst the provinces, Quebec always stood at the foot. I observed, how-

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ever, while he was reading, that he told us also that Ontario generally stood at the top of the list. If there are two provinces in which both the separate and the public school systems prevail and that of those two provinces one is at the top and the other at the bottom of the list, what he can make out of that, in the way of proving either in favour or against separate schools, passes my comprehension.

Sir CHARLES HIBBERT TUPPER.—I think Nova Scotia came third in his list; and though they have not a separate school system on the Statute-book, they have it in practice.

Mr. McCARTHY.—At the same time, in one province the Catholics are in a large majority and in the other the Protestants are in a large majority.

Mr. EWART.—Does my learned friend say that teaching a little religion in the schools is a bad thing for education? No, he does not say that; he says it is well to keep religion in the schools. But does he say that teaching the Catholic religion in the schools is a bad thing? I do not think he would say that after the disclaimer of yesterday. Then where is there anything that militates against the success of separate schools? In Ontario, for instance, they are working under the same rules and regulations as are the public schools, with the same kind of inspectors, the same books, and the same government regulations? They have a little Catholic religion taught there, and does he say that makes a difference? If so, I am afraid I shall not be able to give him credit for his disclaimer of yesterday.

Then he attacks the separate schools, particularly in Manitoba. I think we have been quite prepared to hear that in Manitoba the teachers are not up to the full standard that they are in Ontario. Where there are a great many schools with a very small attendance, and where the salaries are necessarily low because of the poverty of the people, one would be quite prepared to hear that the schools were not up to the Ontario standard. But the defect is not altogether upon the side of separate schools. For instance, if we take up the report for last year of the public schools in Manitoba and look at the statistics on page 8 with reference to teachers, we find that out of 997 teachers, 222 were put down as untrained, not quite a fourth of them, but still about one-fourth of them are altogether untrained.

Mr. McCARTHY.—Untrained at Normal schools.

Mr. EWART.—They have had no training as teachers, and I think that is not to be wondered at under the circumstances.

My learned friend read some examination questions for the purpose of showing how absurd some of the questions are which teachers are required to answer. Many of them, however, I, for one, quite approve, that is, if the catechism is going to be taught in the schools, and he says he has no objection to religion being taught in the schools. If the catechism is to be taught in the schools, I can see no objection to asking the questions upon it that my learned friend has read. Then as to those questions which were written, if not read, with a sneer, questions as to the way to address dignitaries—all I can say is that I wish that they had been taught in the schools when I was young. If we are going to have dignitaries, one thing we ought to know is how to address them. But the absurd questions are not altogether in the Catholic schools. I can give, if necessary, a number of very absurd questions that have been put at Protestant examinations, and I am sorry to say, even in the Civil Service examinations to the ladies employed in the post office department. I remember one that was put to those young ladies who are busy sorting letters all day, was this: "What is the deepest lake in the world?" No particular book was prescribed for studying that subject.

Hon. Mr. FOSTER.—They wanted a place to sink dead letters.

Mr. EWART.—I suppose that must have been the explanation of it. In an examination of Protestant teachers not very long ago, there was this question, "How many legs has a spider?" I think, (however, the best way to answer such statements is to read from a pamphlet that was issued by His Grace the late Archbishop Taché, telling of the success of the Catholic exhibits sent over to the Colonial Exhibition in 1885:

"In the fall of 1885, Sir Charles Tupper visited the province with the view of having it take part in the International Exhibition which was to take place in England during the following year. The Catholic section of the Board of Education was invited to help in the exhibit. The proposition at first was met with little favour,

it was after vacation; the schools had hardly organized for the new year; there was no time to prepare anything new; nevertheless, the Canadian Commissioner was so pressing that objections were overruled, and a collection was made in some of the nearest schools out of the work of the pupils of the previous year. The most advanced had left their classes, some of the best work had been lost or carried away, and none had been prepared in view of the exhibition. Eight schools furnished samples of their work in different branches, the whole was forwarded to England, it was exhibited there, it attracted so much attention that every article exhibited was examined, re-examined, in such a way that when they were returned, their condition proved that they had passed through a great many hands. A diploma of merit and a medal of honour were sent to each of the schools, as well as to their superintendent, who had contributed to the exhibit, and we had a proof that such complimentary recognition was not merely a matter of form. Capt. W. Clarke, as every one knows, was the Manitoba representative at the Colonial and Indian Exhibition, and here is the way the gallant and intelligent representative wrote to the Superintendent of Catholic schools in Manitoba:—

“ ‘LONDON, 27th July, 1886.

“ ‘DEAR SIR,—I can speak with experience with reference to the excellence of your section, two of my daughters having been for a long time with the good sisters of St. Boniface, where their progress was as satisfactory to me as it was pleasant to them.

“ ‘I am, sir,

“ ‘Your obedient servant,

(Signed)

“ ‘WILLIAM CLARKE.

“ ‘T. A. BERNIER, Esq.,

“ ‘Supt. of Education.’

Mr. Clarke is not a Catholic, nor has he shown any tendencies towards Rome, but through his daughters he has acquired some knowledge of a Catholic school in Manitoba, and so was prepared to acknowledge without surprise the merit of their exhibit.

Sir Charles Tupper is not a Catholic either, and is known all over for his superiority and patriotism; here is the way that the Canadian High Commissioner speaks of the Catholic schools of Manitoba:

“ ‘COLONIAL AND INDIAN EXHIBITION, 1886.

“ ‘CANADIAN SECTION,

“ ‘LONDON, 29th July, 1886.

“ ‘To T. H. BERNIER, Esq.

“ ‘MY DEAR SIR,—I duly received your letter of the 3rd inst., and thank you for the memorandum which you have prepared on behalf of your section of the Manitoba Educational exhibit. I shall be pleased to receive a thousand copies of the memorandum and to see that they are carefully distributed. The exhibit which you have taken such pains to collect has already attracted considerable attention, and I do not doubt it will add to the success of the Dominion at the exhibition.

“ ‘I remain, yours faithfully,

(Signed)

“ ‘CHARLES TUPPER.’

Is it possible? can anything good come from that (sort of) Nazareth? Yes, friends, come and see that Sir Charles Tupper does not hesitate to say that the exhibition of the ordinary work of the pupils of Catholic schools of Manitoba will add to the success of the Dominion at the exhibition. If you are not satisfied with such testimonies, listen to the following remarks published in the Canadian Gazette of London, on the 4th November, 1886:—

“ ‘It is generally believed, that of all the sister provinces, that of Manitoba is the least advanced towards civilization. We already know, that in many respects, such is not the case, but if we consider the excellent scholastic exhibition of that province, we see in what degree that impression is erroneous, especially in the matter of education.

“ ‘The collection contains samples of books, exercises, scholastic material, etc., etc., coming from the Catholic schools as well as from the Protestant schools of the province.

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"The excellence of the work, and especially of the geographical charts, is incontestible. This is the more pleasing, if we consider the fact that many exhibits are dated from the year 1884, and the beginning of the year 1885. It is evident the exhibit is composed of the ordinary duties of the schools in all parts of the province, and not of work specially prepared for the occasion.

"No pretention has been made to eclipse the school exhibits of the other provinces, but the collection that is under our eyes denotes that in one of the most recently 'organized' provinces of the Confederation, there exists a school system, which although respecting the faith and religious convictions of the population, offers to every one an education capable of fitting for the highest rank in the society, the child who is placed under its care."

My learned friend's next argument was that Catholic children go to the public schools, both in Ontario and in Manitoba. He quite admitted, too, that that had been brought about, so far as Ontario was concerned, by a policy of friendship and concession; that because the Catholics were satisfied, and there was no struggle going on, they naturally drifted into the public schools. He quite admitted, too, that the effect of Mr. Meredith's agitation against Catholic schools, was not to drive them further into the public schools, but to drive them in the other direction, and that there had been a large increase of separate schools owing to that agitation.

Mr. MCCARTHY.—An increase, not a large increase.

Mr. EWART.—It seems to me that there is here a great lesson for the province of Manitoba. Would it be justifiable for this Council and for the Dominion parliament to interfere, in order to carry out Manitoba's own object? If Manitoba's own object is to get all these children into one school, what is the proper way to go about it? Looking at Ontario, for example, is it by coercion? Is it by contesting the matter with the Catholics, or is it by conciliation, by letting them have their own way? If we are to believe his statistics for Ontario, clearly the latter course is the best one to follow. So I say that parliament would be helping the object that Manitoba says she has in view, by adopting the proper course to attain that object, and not the one that Manitoba, in its foolishness, has seen fit to adopt. But I deny the correctness of his statistics upon that point. There are a number of considerations which go to annihilate them completely. It must be remembered that a large number of schools in Ontario, although called public schools, are in reality separate schools, that is, the Catholic religion is taught there; that by a process of severe winking, such as my learned friend says Manitoba is quite willing to engage in, the schools, although public schools, are really of a character satisfactory to Catholics.

Mr. MCCARTHY.—You are assuming I said that; I do not know that to be the case.

Mr. EWART.—I think you do know that that is being done in Manitoba. But I do not know that you know it is being done in Ontario.

Mr. MCCARTHY.—I do not know that it is being done in Manitoba.

Mr. EWART.—My statement with reference to Ontario is based upon the opinions of a great many individuals. The County of Essex I would mention particularly as a county very much in point. Then, it must be remembered that a large number of Catholics in Ontario are scattered, and it is therefore impossible to get them together.

So far as Manitoba is concerned, he makes what would be a strong point without explanation, when he says that in the course of four or five years since the school acts have been in force, no less than 36 separate schools have come in under the public school system and have complied with the requirements of the statute. Now that is not so, and what has been done has been accomplished in the most objectionable manner. The Acts of 1890 were no sooner passed than a gentleman who spoke the French language, was employed to go into the Catholic school districts and visit the trustees and the parents, going from house to house, with the view of getting them to adopt the public school system. Then commenced what may be termed the temptation on the prairie. That gentleman, whether he was so instructed or not, used this argument: Come away from the Catholic schools, come into the public schools, and you will save money by it. You will get the Parliamentary grant, you will get

your share of the municipal taxes, and you won't have to pay for the Protestant schools or the public schools, and at the same time support your own schools. However, he met with little success, as these statistics sufficiently show. For the first three years, he met with little success, although various expedients were resorted to. For instance, they were asked not to abandon the books which they had before, but merely postpone their religious training until after 4 o'clock. After he had got in a certain number that way, he found he could get no more. He had got, I think, about a dozen out of the whole province, with inducements of that kind, appealing to their poverty and appealing to their ideas of getting education for their children. The Act of 1894 was then brought into force, and, as he says himself, the effect of that was the withdrawal of \$20 a month from the schools. My learned friend says, to quote his own language, "the withdrawal of \$20 a month has forced them to come in." That is what it was passed for. They had not got more than a dozen schools out of all the separate schools in Manitoba. Prior to the Act of 1894, the Catholics could tax themselves, or rather procure from the municipalities where they were all Catholics, a sum of \$20 a month. The Manitoba government put on another screw, and the result was that a large number of the schools came in. But to what extent did they come in? The Manitoba government or legislature had succeeded in turning the Catholic religion out the front door in order to gratify Protestants, or some of them, and then, in order to satisfy the Catholics, they said, "let it come in at the back door as long as you do not say anything about it." The fact is to-day—the superintendent may contradict me if it is not true—the Catholic religion is taught there exactly the same as before, in every one of the schools.

MR. BLAKELY.—No.

MR. EWART.—If he means it is not taught in the same way he probably means that it is not taught at the same time. Before 1890 it was taught during the school hours between 9 and 4 o'clock; since 1890 it has been taught from 4 o'clock to 4.30. That is the difference between the schools. Thus, what were Catholic schools before 1890, and what were called Catholic schools, are given credit for being public schools now. The difference between them is this, that then religion was taught between 9 and 4 and now the children are kept in for another half hour in order that it may be taught them.

MR. MCCARTHY.—I think that is permissible under the law.

MR. EWART.—No, it is not permissible under the law.

MR. MCCARTHY.—Why not?

MR. EWART.—I will read my friend the law.

"Religious exercises in the public schools shall be conducted according to the regulations of the advisory board. The time for such religious exercises shall be just before the closing hour in the afternoon."

So, according to the law it is just before the closing hour, and according to the practice just after the closing hour in the afternoon.

MR. MCCARTHY.—You hold political meetings in the public schools.

MR. EWART.—Section 8 of the Act says:—

"The public school shall be entirely non-sectarian and no religious exercises shall be allowed therein, except as above provided."

The Catholic religion is still taught, as it was before.

MR. MCCARTHY.—Not during school hours.

MR. EWART.—But I am showing that the only difference is, that while formerly the Catholic religion was taught during school hours, now it is taught during the next hour thereafter. The advisory board have the power to fix the school hours as they like. They have fixed the hours from 9 o'clock to 4. Suppose they fixed the hours from 9 to 3.30, then if the teachers occupied the half hour after school hours in teaching religion, the state of affairs would be just what it is now. The only difference would be that the school hours would be changed a little. So, that what my learned friend objects to is not to the teaching of religion in the schools, but to teaching during school hours, insisting that the children should be kept in after school hours to teach it to them. Now, there might be something said in favor of that if there were Protestants in the districts affected as well as Roman Catholics, but where, as is the great majority of these cases, none but Catholics go to the schools in question, I cannot see the soundness of



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this objection. All this fight and turmoil is about the question whether the children should be taught religion just before or just after 4 o'clock.

Mr. McCARTHY.—And all you are arguing for is for a change in the law which will enable the teaching of religion to be carried on half an hour before, rather than half an hour after four o'clock.

Mr. EWART.—We want our rights secured by law and not left to the whim of the government.

My learned friend says that not only according to the practice in Manitoba and Ontario can the children attend the public schools, but he says that the Catholic doctrine permits it. My learned friend reminds me of what Lord Morris said in his rich brogue, when the case was being argued before the Privy Council. My learned friend may remember—

Mr. McCARTHY.—I remember the brogue.

Mr. EWART.—Speaking with reference to Dr. Bryce's affidavit, Lord Morris remarked: "This gentleman gives it as his individual opinion that the Catholic religion ought to be something entirely different from what it is." So my learned friend is trying to make the Catholic religion something entirely different from what it is. I have here a statement of the Catholic doctrine, and I can show it him in the original, but it is in a language I fear he would object to as much as he does to the French. It is in Latin, but I can give him a free translation:—

"The teachings of the Roman Catholic Church in relation to education were communicated to the American bishops by the late Pope Pius IX. and confirmed by Pope Leo XIII. that the members of the church should be warned against frequenting the public schools wherein the religion of the Roman Catholic Church is not taught.

"While this is the general principle, yet the Roman Catholic Church, not being inimical, as is so often alleged, either to elementary education or to instruction in the higher studies, permits its children to avail themselves of the advantages of the public schools in cases where there is no fear of perversion and where it is impossible to provide church schools."

So that it will be seen that public schools can be attended by Catholic children only under two limitations: first, that Catholic schools cannot be established and, second, that the public schools are free, at all events, from positive objection.

Mr. McCARTHY.—But that has been changed by what I read from the ablegate.

Mr. EWART.—I do not think so.

My learned friend goes into the history of the school Acts with a view of showing that the law has been adopted of set purpose and deliberate intention by the people of Manitoba. But he has been altogether too modest in the history of these school Acts. He forgets the part which he took himself—and he will forgive me for referring to him in this connection, because it is impossible to tell the history of these school Acts without referring to him. He says that the history commenced in 1876. Well, at that time Professor Bryce, who has taken an active interest in this question, wrote a pamphlet on the subject. But that is all that was done; the pamphlet fell flat and dead. Thirteen years intervened without a single word of complaint. There was not a man in Manitoba who knew that there was a grievance with reference to separate schools. We did not hear a word about it. No political party, no politician, no clergyman, no private individual, so far as I know, said a word about it. The first word, so far as I know, was spoken by my learned friend.

Mr. McCARTHY.—That is not correct.

Mr. EWART.—It is absolutely correct.

Mr. McCARTHY.—It is absolutely incorrect.

Mr. EWART.—I think I can prove what I say. My learned friend is reported to have said on one occasion that he was forestalled in this matter by Mr. Smart, who was then a member of the Government of Manitoba, in his speech at Clearwater. But my learned friend is in error about that. Mr. Smart did speak at Clearwater, but he did not advocate the abolition of separate schools; what he did advocate was the combination of the government of the two sets of schools under one power, and that is all he advocated. The first word said in favour of the abolition, or suppression rather, of

separate schools in Manitoba, so far as I know (apart from Prof. Bryce's pamphlet in 1876), was spoken by my learned friend in Portage la Prairie in 1889. I think my learned friend's suggestion that he was not the first relates to what I have mentioned—he thinks he was anticipated by Mr. Smart at Clearwater. I want to read what my learned friend said at Portage la Prairie and what was said on the same platform immediately afterwards by Mr. Joseph Martin. I think Mr. Martin got his cue from my learned friend, but however that may be, he was the one who introduced the Schools Act, forced it upon his own government, and carried it. Then I want to read what Mr. Smart said at a subsequent period, this Mr. Smart who was supposed to have forestalled my learned friend by his announcement of a policy of the Government. I will read what my learned friend said at Portage la Prairie.

Sir CHAS. HIBBERT TUPPER.—This was in 1889 ?

Mr. EWART.—Yes.

Mr. MCCARTHY.—In August, 1889, after Mr. Smart's speech.

Mr. EWART.—This was three days after Mr. Smart's speech at Clearwater and several days before his speech at Wawanesa. My learned friend said :—

"There was something for the politician to live for ; we have the power to save this country from fratricidal strife, the power to make this a British country in fact as it is in name. In order to accomplish this other issues must for the moment give way. We have got to bend our energies and let it be understood in every constituency that, whether a man call himself Grit or Tory, Conservative or Reformer, his record is clear, his principles are sound and no influence at Ottawa will induce him to betray his great trust. The speaker was glad to inform the meeting that the poor, sleepy Protestant minority of Quebec were at last awake."

My learned friend, as you will remember, had been arousing them with his Equal Rights Association and had had some success in opening their eyes.

"He trusted before many weeks to address a meeting in Montreal and to realize that that minority is sound to the core on this question. There is the separate school question here and in the North-west, and there is the French school question in Ontario ; we have all the work to do in our various localities ; let us do that first before we seek to traverse fields before more difficulty is to become encountered because vested rights have become solidified."

That is the first word said, apart from Dr. Bryce's pamphlet, so far as I am aware, for as to Mr. Smart's speech at Clearwater, I hope to show you that it does not relate to the suppression of separate schools. Mr. Joseph Martin was on the platform when my learned friend delivered his speech. He was a member of the Greenway Government, of which Mr. Smart also was a member. If Mr. Smart, a few days before had announced the policy of the Government, Mr. Martin would have known it and would have told the people what the policy of the Government then was—for it could have been no secret if it had been announced by Mr. Smart sometime before. But this is what Mr. Martin said :—

"He could not say that it had been announced by the Government at least not very definitely, what action they proposed to take in connection with the dual language and separate school system in this province, which were subject of an entirely similar nature with the discussion now going on with regard to the disallowance to the Act in Quebec. But he thought it had been very well known in this province for some years back what his own individual feelings were in regard to the use of two languages in the legislature."

I will read what Mr. Smart said at Wawanesa.

Mr. MCCARTHY.—That is not all Mr. Martin said. If I remember rightly, he went on to say that he would abolish the dual language system.

Mr. EWART.—I have read what he said about separate schools.

Mr. MCCARTHY.—I do not think he says he will do anything about separate schools, but that he will abolish the dual language system.

Mr. EWART.—That is what I am speaking about. He did not pledge himself as to separate schools, but if the Government policy had been announced he would have pledged himself on that question.

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Mr. McCARTHY.—It had already been announced.

Mr. EWART.—His abstention from doing so is proof that it had not been announced. I will read you what Mr. Smart said a few days afterwards :—

“It was not his intention, neither by speech nor inference, to be understood as speaking disparagingly of Roman Catholics. They were as much entitled to their rights as any other people, and he would defend them as energetically as he would those of the Protestants. In referring to the schools, he did not set himself up as an educationalist, but as the matter had come before the Government, he spoke of it in a practical way. There was, he said, very much of an anomaly in it all. *While the state recognized both systems*, he did not undertake to discuss or take any side in the matter as to whether this was right or wrong.”

Later on Mr. Smart spoke as follows :—

“The Liberal party is known to be the party of reforms, and the present Government is prepared to undertake the task of giving in the matter of the conduct of the educational system equal rights to all citizens of the province, and thereby making a reform, which should be received by every fair-minded man in Manitoba, with favour. *I do not wish to be understood in any of my remarks on this question to advocate the abolition of the separate school system. I am not prepared to express any opinion, at present, on this question, nor do I purpose discussing the question as to whether the principle of state aid to any class of denominational schools is or is not a correct one.* Sufficient it is for me now to point out under the existing laws the unfairness that exists, with a view to giving to the people the reasons for the changes which will shortly take place in the law pertaining to the carrying out of the educational institutions of the country. The whole department will be placed directly under a responsible Minister of the Crown, and similar regulations as to qualifications of teachers, as to inspectors, normal schools, &c., will be made both in the case of separate schools as well as Protestant. This course will effect the saving of some thousands of dollars, which will go further to assist in reducing the taxation raised by the people of Manitoba.”

I think I have now proved my point that my learned friend was the first to say anything about the suppression of public schools.

Hon. Mr. DALY.—You have not read what Mr. Smart said at Clearwater.

Mr. EWART.—I will read what Mr. Smart said at Clearwater prior to my learned friend's address at Portage la Prairie :—

“The anomaly existing as to the separate school system was pointed out, and it was the Government's intention to overhaul the whole educational machine. The double-barrelled system must be abolished. The two superintendents, the two boards and two sets of inspectors must go, and a minister of education will be appointed (a present minister taking the portfolio who would administer the education department and be responsible to the people. The change would enable ministers to greatly increase the grants towards the support of schools, and would benefit the taxpayers.”

So that it was a mere change in the regulation and control of schools that he spoke of. The first word as to the suppression of separate schools was spoken by my learned friend at Portage la Prairie.

My learned friend says the School Acts were carried by large majorities in the Legislature elected in 1888. He is quite correct, but he forgets how these Government majorities were obtained. They were obtained by the promises—if I may refer to what is generally known, and is shown by the affidavits which were withdrawn—that were made to the Roman Catholics in that election. My learned friend says that after the acts were passed another election took place, in which he says, and expects me to admit, that the great question before the electors was the school question. He says that the result of an appeal to the country upon the question and after a full threshing out of the issue was a majority in favour of the Government.

Mr. McCARTHY.—In favour of the Public Schools Act ?

Mr. EWART.—Well, that is in favour of the government. He read almost immediately afterwards the declaration issued at that same election by the Conservatives as their platform, showing, as he says, that the Conservatives were in favour of abolishing

separate schools. I do not think that any politician ever heard of such a thing before —both parties were on one side, both in favour of abolishing separate schools and yet that this was the great question before the people to be decided. Of course my learned friend used these two facts for a different purpose, but they are mutually destructive. In fact my learned friend is quite wrong when he says that that was the great question in that election, for it was not. The question of the schools was hardly debated at all, so far as I know, except in the French parishes, and there, of course, all were on the same side. It was not an issue in the election, because the matter was in the courts and it was not thought advisable by the Catholics to make an appeal to the electors at that time. My learned friend read this platform of the Conservatives for the purpose of contradicting what I have said in claiming that I represented really the matured opinion of the Conservatives upon this point. I did not intend to say, and I did not say, that at that time the Conservatives looked upon this matter in the light that we desire. What I did claim was that they looked at it in that light now, and that since the decision of the Privy Council they had seen what was best to be done and were quite ready to obey its behests and fall in with the suggestions of their Lordships of the Privy Council. And my learned friend gave me the evidence of that a little later, though using it for another purpose. He referred to Mr. Fisher's resolution for which the whole Opposition voted. Mr. Fisher's resolution, after recitals, says:—

"And having regard to the suggestions of the tribunal referred to, that 'all legitimate ground of complaint would be removed if the present system were supplemented by provisions which would remove the grievance upon which the appeal is founded, and were modified so far as might be necessary to give effect to those provisions' without a repeal of the present law; this House is ready to consider the grievance referred to with a view to providing reasonable relief, while maintaining, as far as possible consistent with that object, the principles of the present acts in their general application."

What I said is that every Conservative in the House voted for that, and it is no contradiction of what I said as to my representing the matured opinion of Conservatives to show what was the Conservative platform in 1892 under totally different circumstances. And not only did Conservatives vote for that resolution, but Mr. Fisher, who is a very good Liberal, voted for it and I believe that a good many other Liberals outside of the House take that view of the subject also.

Then my learned friend raised the point that before the Council could interfere it must say that separate schools were better than public schools. Now I submit that there is a great variety of things that this Council might say without saying that. I can suggest seven, and no doubt I have not thought of all. One thing that the Council might say is that it would be best to leave matters of religion to the people themselves. A second is that the old law worked well for twenty years without a word against it and without the people knowing that there was any grievance, while since then everything has been turmoil and confusion. A third suggestion is that the Council might say that separate schools were agreed to at the Union and it might surprise Mr. Greenway very much by showing some regard for honourable engagement. A fourth thing the Council might say is, that Parliament has declared that it desired separate schools established, that in the case of New Brunswick, Parliament's decision has been in favour of separate schools, and, to put Parliament in possession of the matter, this Council ought to pass an order for that purpose. It might be said in the fifth place, that the policy of Parliament was indicated by its dealing with the North-west Territories, whose circumstances are very much the same as those of Manitoba. Parliament established separate schools in the North-west Territories, and, by large majorities refused to disturb them. Sixth, in all other parts of Canada except perhaps Brit'sh Columbia there are separate schools by law or common consent. Seventh, the Council might say that the Manitoba government has itself re-established separate schools after four years' experience, and the only objection to their being sanctioned by the law is that they have some sentimental objections to being bound to do right. With reference to this last, I would like to read from my learned friend's address of the day before yesterday, what I consider the most important, or, at least, the second most important

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statement made during this whole debate, perhaps during this whole controversy, the only one to compare with it in importance being his declaration that we had a grievance, and that there was power here to remedy it, but that two and two did not make four. At page 30 of the second day's proceedings Mr. McCarthy is reported to have said :

"In the provinces that are free, we are told, and it is the best possible argument that can be urged, that so tolerant are the majority, so willing are they to yield rights which could not be legally claimed, that, to adopt the language of my learned friend, we wink at infractions of the public school law so that it becomes almost a separate school system. And they do it willingly. But it is one thing to compel people to do a thing, and it is another thing to leave it to their free choice. It is a strong argument in favour of allowing the people of Manitoba to work out their own salvation without interference."

Now what does my learned friend suggest here,—that the separate school system is wrong? Not at all, but that it is right. And so tolerant are the majority that the Catholics may have a separate school system if they will only be kind enough to take it as a gift and not as a right guaranteed by the law. There is the whole point. "They are willing to wink at infractions of the public school law." These gentlemen say: Let us have the law one way and let us have illegal transactions going on in schools, and that is all right. Let us have the Catholic religion taught there and education carried on under religious auspices, and that is quite correct; but the law must be one way even though the practice is the other. I do not think we are unreasonable in saying that we are not satisfied to have the law one way and the practice the other way. If we could be sure that the practice would remain the way we want it, it would make no difference of course. But with such a Government as we have to-day or with such a Government as we may have from time to time we are not sure that the winking will be carried on as steadily as heretofore, particularly when it is done for one purpose only, and that to induce us to come in under the public schools. But by winking they have allowed the separate schools to continue, only they must be carried on under the name of public schools.

Sir CHAS. HIBBERT TUPPER.—And I suppose that what you are afraid of is that it may be a long time between winks.

Mr. EWART.—That is very well put in. That is what we fear.

My learned friend undertook to give a definition of national schools. I think he was not successful. He said that national schools are those common to and enforcible upon all inhabitants. He thought they might be even denominational schools so long as there was only one system, but there must be only one system or they would not be national schools. I would oppose to that this definition:—National schools are those that are governed by the nation; and I would add that in order to be truly national they must provide for the nation and not for a party. Now I say that my learned friend's definition is wrong in so far as it implies that it is a necessary feature of national schools that they should be enforcible upon all. Surely there can be national schools even though you have no compulsory clause. I say also he is wrong in saying that there must be one system for all. In England we have separate denominational schools as well as the public schools and one of the provisions is that these must be open to all. Yet my learned friend would not agree that these were national schools. In defence of my definition I would say that national schools are those governed by the nation, just as church schools are those governed by the church, just as denominational schools are those governed by the denominations. National schools are those governed by the nation, just as we say national railways are those owned and regulated by the government. It does not follow that all schools must be upon one system; it is not necessary they should be exactly alike. I do not think it is a necessary part of a national railway system that all the railways should be of one gauge. We could have a national costume and yet have a great variety of tartans. Suppose there was a system of national schools in which, in Protestant districts, the Protestant religion was taught, and the Catholic districts the Catholic religion was taught, but all governed, regulated and inspected by the nation. Would the fact that one form

of religious exercise was carried on in one and another form of religious exercise in another make these non-national schools. In order to be national they must provide for the education of the nation. What are the schools we have in Manitoba? They are national in the sense that they are governed by law, by Parliament, but they are not national in the sense of providing for the nation. In fact they leave a large part of the nation unprovided for, because they are schools that a large part of the nation will not attend. I claim that the schools that exist in Ontario to-day known as separate schools, are national schools. They are called separate schools as a name to distinguish them. Just as in a railway station you will find different waiting rooms, one for ladies, one for gentlemen. Nevertheless these are all public rooms. So in Ontario, some schools are intended for non-Catholics and some for Catholics, but all are national schools, each providing for a large part of the public and controlled by the government.

Now a few words with reference to the New Brunswick case. My learned friend gave you the whole history of the divisions upon that. What are the results as declared by the Dominion of Canada? One result is that the New Brunswick Acts were unjust, and the people had a grievance. That is fairly enough to be inferred from the different resolutions. Another result is that these Acts ought to have been disallowed, for Mr. Costigan's resolution of 1873 was passed so declaring. In the third place we see why the Dominion did not interfere in that case, viz.: because they had no jurisdiction to intervene, or they would have done so. Mr. Mackenzie, the leader of the Government after 1873 so stated in one of the paragraphs my learned friend read. In the fourth place we see that Her Majesty the Queen was asked to use Her influence to secure a remedy for the injustice that was done to the Roman Catholics of New Brunswick. The fifth point determined is that though there was an injustice, Parliament would go no further than asking Her Majesty to use her influence, but would not ask for such radical relief as an amendment of the whole constitution of the Dominion of Canada. Now, these results seem to me to be very important and to point in an entirely different direction from that indicated by my learned friend. He drew this inference from the history of the New Brunswick case, that Parliament would never interfere, that it was the declared policy of Parliament never to interfere, with any matters relating to education. I have shown you that the contrary conclusions are the ones to be drawn from an attentive perusal of the history of the case.

Then my learned friend says there are very few Roman Catholics in Manitoba, only from ten to fifteen thousand, and that therefore no very great damage will be done after all. That is just the trouble. If there were a few more we would not have to face this difficulty. When Mr. Martin first introduced these School Acts in the local legislature they provided for purely secular schools. The Protestants got together at once, headed by their ministers—which is a very proper thing for Protestants to do, but very wrong for Catholics—and they brought such influence to bear that Mr. Martin was forced to change his Act and to make it conform to their ideas regarding schools. But the Catholics were not strong enough to do that, and so they had to suffer. I do not think it makes it any the more creditable—my learned friend would say many I suppose—that the people upon whom the injustice is perpetrated are few in number. We have it clearly enough established that the Government did not do what they wanted to do because they were opposed by those who were strong, but with regard to those who were weak the Government did what they pleased. My learned friend says—or rather if we may infer from his words at page 30 which I have quoted, he thinks—that no great harm will be done, because after all the people are so tolerant that they will “wink at infractions of the law” and so there will be in effect a separate school system!

My learned friend has been endowed by nature with faculties of unusually high order; let me beseech him to reflect upon the disrupting purposes to which he has for the last few years been applying his great talents. Let him remember that had it not been for him the “sleepy” Protestants of the province of Quebec would never have believed that they had suffered wrong or insult by the passage of the Jesuits Estates Act; and the unfortunate animosities stirred up by his agitation would never have been aroused.

Let him remember that had it not been for him, the Protestants of Manitoba would never have known that they had a grievance in the matter of Catholic schools; that but

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for him, the fellowship and respect, which prior to 1890 existed between Protestant and Catholic, between Presbyterian and Jesuit, would never have been interrupted, and that that harmony and co-operation between religious bodies which are so beneficial, not only for education but for religion itself, would never have been, as I am afraid they have been destroyed.

I beg of him to remember, that while it may be proper that respect should be paid in provincial legislation to the feelings of a small body of men in another province—namely to those of the members of an association which sprang up in a night and died in a night, it is all the more proper that respect should be paid to the feelings of a large body of men in the same province, and to the feelings of two millions of people in the other provinces.

Let him above all remember that the golden rule was not made for the use of Catholics and for the advantage of Protestants; but for Protestants and Catholics alike, for him and for me, and for all the world beside.

Let him turn from his efforts to awake “sleepy” Protestants in Quebec, and arouse satisfied Protestants in Manitoba, to conflict with those they have learned to respect, and let him learn from him whom he so long followed politically—and not from him only but from Mackenzie, Blake, Mowat and all the great leaders upon both sides of politics—that Canada’s true national greatness can never be attained by force and coercion of large and important minorities, but by a spirit of fairness and sympathy—a sympathy which when it attains the ideal will mould all the religions of the world into one, all-embracing, religion of love.

My last words, I am glad to say are words of agreement with my learned friend in thanking you for the patience with which you have listened to this long, and, speaking for myself, I fear, very tedious argument.

Sir CHARLES HIBBERT TUPPER.—I would like to ask if you had considered the form of any remedial order? You submitted a bill; have you thought of any form of remedial order?

Mr. EWART.—To some extent I have, and I would suggest the adoption of the form of order which proceeds from the Judicial Committee of the Privy Council. Rather this, at all events, than the form usually followed in Orders in Council of a report of the committee and the adoption of that report. I do not think it would be proper to proceed in that way, because I think the committee has no jurisdiction to hear us, but the whole Council had, and the whole Council has heard us.

Hon. Mr. IVES.—Can you give the Council anything like an accurate estimate of the children of school age in Manitoba?

Hon. Senator BERNIER.—There are about 6,000.

Mr. MCCARTHY.—I have here the report of the Department of Education of Manitoba for the year 1893. I do not know that the figures are wholly accurate, but they will show approximately the school population in that year.

Sir MACKENZIE BOWELL.—The petition which Mr. Ewart asked for is upon the table for his use.

Mr. EWART.—I did not know that I was to have this petition this morning. As it is here, may I be allowed to say a few words in answer to the statement that I represent only the French element. I refer to the original petition put in, which contains 4,267 names. Reference to this document will show that it is signed by French and by Irish and English indifferently. And the names upon it, the Roman Catholic population of Manitoba being about fifteen thousand, represent more than 25 per cent of that whole Catholic population, men, women and children.

Mr. MCCARTHY.—I was going to suggest to the President that with regard to the so-called fourth list of rights, said to have been introduced at the trial of *Regina v. Lepine*, a certified copy of which is filed, it would be well if the Minister of Justice would have a copy of the evidence regarding it put in at the same time.

Sir CHAS. HIBBERT TUPPER.—You mean the evidence regarding it when it was put in?

Mr. MCCARTHY.—Yes. When it was put in at the criminal trial. It might be of historical interest to know that.

Sir MACKENZIE BOWELL.—As the argument is finished this Council will now adjourn. The Council then adjourned.

## EXHIBIT A.

In the matter of the appeal of the Roman Catholic minority of the Queen's subjects in the Province of Manitoba to His Excellency the Governor General in Council, from two certain acts of the Legislature of said province, being chapters 37 and 38 of 53 Victoria, intituled respectively: "An Act respecting the Department of Education," and "An Act respecting Public Schools."

I, Noel Joseph Ritchot, of the parish of St. Norbert, in the province of Manitoba, parish priest of the Roman Catholic Church, make oath and say:

1. I was a resident of the Red River Settlement in and prior to the year 1870, and resided then as now about nine miles from the present city of Winnipeg.

2. I was one of the three delegates that were sent from the said settlement in that year to negotiate with the Government of the Dominion of Canada as to the terms upon which Rupert's Land and the North-west Territories were to be united to Canada. The other two delegates were Judge Black and Mr. Alfred H. Scott.

3. The instructions I received were in writing and consisted of three documents. True copies of two of these documents are hereto annexed and marked with the letters A and B, and the third was a bill of rights (Exhibit B), the seventh clause of which was as follows: "That the schools be separate and that the public money for schools be distributed among the different denominations in proportion to their respective populations according to the system of the province of Quebec."

4. I received these documents together and I never received any other bill of rights than the one aforesaid. The other delegates had with them at Ottawa bills of rights similar to the one aforesaid.

5. The said delegates had frequent and protracted conferences with Sir John A. Macdonald and Sir George E. Cartier who had been appointed a committee by the Canadian Government for the purpose of negotiating with us, which conferences extended to the second day of May.

6. During the said negotiations the said committee submitted to the delegates a draft of a bill containing the terms upon which they were prepared to consummate the union. This bill contained 26 clauses and the 19th thereof was an adaptation of section 93 of the British North America Act.

7. Upon the margin of the said draft bill I wrote my comments or remarks opposite each of the sections. Opposite the said clause 19 I wrote as follows:

"Cette clause étant la même que celle de l'Acte de l'Amérique Britannique du Nord, confère, je l'interprète ainsi, comme principe fondamental le privilège des écoles séparées dans toute la plénitude et, en cela est conforme à l'article 7 de nos instructions."

Which is equivalent in English to,—

"This clause being the same as the British North America Act, confers, so I interpret it, as fundamental principle, the privilege of separate schools to the fullest extent, and in that is in conformity with article 7 of our instructions."

8. I returned to the said committee the said draft bill with my remarks and comments written thereon as aforesaid and with the said memo. opposite the said clause 19.

9. After the conferences with the delegates were completed Sir George E. Cartier on the third day of May introduced into the House of Commons the bill which afterwards became the Manitoba Act.

10. Shortly afterwards I returned to the Red River Settlement carrying with me a copy of the said Act which on the twenty-fourth day of June I presented with some verbal report of my mission to the Legislative Assembly. After a short discussion the following resolution was amid cheering unanimously passed:—

"That the Legislative Assembly of this country do now, in the name of the people" accept the Manitoba Act and decide on entering the Dominion of Canada on the terms proposed in the Confederation Act."



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11. The copy of the bill of rights which I received as aforesaid prior to my departure for Ottawa I retained in my own possession until the trial of Lepine in 1874 for the murder of Thomas Scott. At that trial I was called as a witness and did as such produce to and leave in the custody of the court the said copy of the bill of rights, since which time I have never seen it.

N. J. RITCHOT, O.M.I.

Sworn before me at St. Norbert, in the }  
province of Manitoba, this twenty- }  
first day of February, 1895. }

G. CLOUTIER,

*A Commissioner, &c.*

MAISON GOUVERNEMENTALE, WINNIPEG.

*Au Rev. Mons. Joseph N. Ritchot :*

MONSIEUR,—Avec cette lettre vous recevrez aussi votre commission et une copie des conditions sous lesquelles le peuple de ce pays consentirait à entrer dans la confédération canadienne.

Vous vous rendrez aussi diligemment que faire se pourra en Canada, à Ottawa, et en arrivant en cette ville vous vous mettrez en compagnie de MM. l'honorable M. A. Scott et l'honorable John Black, pour entamer immédiatement avec le gouvernement de la Puissance du Canada les négociations qui font le sujet de votre commission.

Veillez, s'il vous plaît, observer que quant aux articles numérotés 1, 2, 3, 4, 6, 7, 15, 17, 19 et 20, vous pourrez, de concert avec les autres commissaires sus-mentionnés, les traiter librement et à discrétion ; mais n'oubliez jamais que puisque la confiance entière de ce peuple repose sur vous, on compte que, vous prévalant de cette liberté, vous ferez tout ce qui est en votre pouvoir, afin de nous assurer ces droits et libertés qui nous ont été jusqu'ici refusés.

A l'égard des autres articles, je suis chargé de vous informer qu'ils sont péremptatoires.

Je dois en outre vous signifier que vous n'avez nullement le pouvoir de mener à conclusion finale aucun arrangement et que toute négociation conduite par vous auprès du gouvernement du Canada, devra préalablement recevoir la sanction du gouvernement provisoire.

J'ai l'honneur d'être, Monsieur et Révérend,

Votre très humble et obéissant serviteur,

THOS. BUNN

22 mars 1870.

*Sect. of State.*

A MESSIRE J. N. RITCHOT, PIRE.

MONSIEUR,—Le président du gouvernement provisoire d'Assiniboia en conseil vous met par les présentes en autorité et en délégation, vous, le révérend Messire J. N. Ritchot, en compagnie de Monsieur John Black, écuyer, et de l'honorable A. Scott, afin que vous vous dirigiez à Ottawa, en Canada ; et que là vous placiez devant le parlement canadien la liste qui vous sera confiée avec les présentes, liste qui contient les conditions et les propositions sous lesquelles le peuple d'Assiniboia consentirait à entrer en confédération avec les autres provinces du Canada.

Signé ce vingt-deuxième jour de mars en l'an de Notre-Seigneur mil huit cent soixante-dix.

Par ordre,

THOS. BUNN,

*Sec. of State.*

Siège du gouvernement,  
Winnipeg, Assiniboia.

## EXHIBIT B.

1. Que les territoires ci-devant connus sous le nom de terre de Rupert et du Nord-Ouest n'entreront dans la confédération de la Puissance du Canada qu'à titre de province et comme sous le nom de province d'Assiniboia et jouissant de tous les droits et privilèges communs aux différentes provinces de la Puissance.

2. Que jusqu'au temps où l'accroissement de la population de ce pays nous ait donné droit à plus nous ayons deux représentants au Sénat et quatre aux Communes du Canada.

3. Qu'en entrant dans la confédération, la province d'Assiniboia complètement étrangère à la dette publique du Canada et que si elle était appelée à assumer quelque partie de cette dette du Canada ce ne soit qu'après avoir reçu du Canada la somme même dont on voudrait qu'elle se rendit responsable.

4. Que la somme annuelle de quatre-vingt mille piastres soit allouée par la Puissance du Canada à la législature de la province du Nord-Ouest.

5. Que toutes les propriétés, tous les droits et privilèges possédés soient respectés, et que la reconnaissance et l'arrangement des coutumes, usages et privilèges soient laissés à la décision de la législature locale seulement.

6. Que ce pays ne soit soumis à aucune taxe directe à l'exception de celles qui pourraient être imposées par la législature locale pour des intérêts municipaux ou locaux.

7. Que les écoles soient séparées et que les argents pour écoles soient divisés entre les différentes dénominations religieuses au *pro rata* de leur population respective.

8. Que la détermination des qualifications des membres au parlement de la province ou à celui du Canada soit laissée à la législature locale.

9. Que dans ce pays à l'exception des indiens qui ne sont ni civilisés ni établis, tout homme ayant atteint l'âge de vingt et un ans et tout sujet anglais étranger à cette province mais ayant résidé trois ans dans ce pays et possédant une maison, ait le droit de voter aux élections des membres de la législature locale et du parlement canadien et que tout sujet étranger autre que sujet anglais ayant résidé le même temps et jouissant de la propriété d'une maison ait le même droit de vote à condition qu'il prête serment de fidélité.

Il est entendu que cet article n'est sujet à amendement que de la part de la législature locale exclusivement.

10. Que le marché de la Compagnie de la Baie-d'Hudson au sujet du transfert du gouvernement de ce pays à la Puissance du Canada, soit considéré comme nul en autant qu'il est contraire aux droits du peuple d'Assiniboia et qu'il peut affecter nos relations futures avec le Canada.

11. Que la législature locale de cette province ait plein contrôle sur toutes les terres de la province et ait le droit d'annuler tous les arrangements faits ou commencés au sujet des terres publiques de R. Land et du Nord-Ouest appelé maintenant province d'Assiniboia (Manitoba).

12. Qu'une commission d'ingénieurs nommés par le Canada ait à explorer les divers terrains du Nord-Ouest et à déposer devant la Chambre législative dans le terme de cinq ans un rapport sur la richesse minérale du pays.

13. Que des traités soient conclus entre le Canada et les différentes tribus sauvages du pays à la réquisition et avec le concours de la législature locale.

14. Que l'on garantisse une communication continue à vapeur du lac Supérieur au Fort-Garry à être complétée dans l'espace de cinq ans.

15. Que toutes les bâtisses et édifices publics soient à la charge du trésor canadien ainsi que les ponts, chemins et autres travaux publics.

16. Que les langues française et anglaise soient communes dans la législature et les cours, et que tous les documents publics ainsi que les actes de la législature soient publiés dans les deux langues.

(Raisons exprimées en anglais.)

17. Que le lieutenant-gouverneur à nommer pour la province du Nord-Ouest possède les deux langues française et anglaise.

18. Que le juge de la cour Suprême parle le français et l'anglais.

## Manitoba School Case.

19. Que les dettes contractées par le gouvernement provisoire du Nord-Ouest soient payées par le trésor de la Puissance du Canada, vu que ces dettes n'ont été contractées que par suite des mesures illégales et inconsidérées adoptées par les agents canadiens pour amener la guerre civile au milieu de nous. De plus, qu'aucun des membres du gouvernement provisoire, non plus que ceux qui ont agi sous sa direction, ne puisse être inquiété relativement au mouvement qui a déterminé les négociations actuelles.

20. Que, en vue de la position exceptionnelle d'Assiniboia, les droits sur les marchandises importées dans la province, excepté sur les liqueurs, continueront à être les mêmes qu'à présent d'ici à trois ans à dater de notre entrée dans la confédération, et aussi longtemps ensuite que les voies de communication par chemin de fer ne seront pas terminées entre Saint-Paul et Winnipeg, ainsi qu'entre Winnipeg et le lac Supérieur.

A true copy of exhibit "N" in the trial of Lépine on record in this department

L. A. CATELLIER,

*Under Secretary of State.*

A true copy :

DANIEL CASEY,

*Clerk of Crown and Peace.*

### EXHIBIT C.

In the matter of the appeal of the Roman Catholic minority of the Queen's subjects in the province of Manitoba to His Excellency the Governor General in Council, from two certain Acts of the Legislature of said province, being chapters 37 and 38 of 53 Victoria, intituled: "An Act respecting the Department of Education" and "An Act respecting Public Schools."

I, James Fisher, of the city of Winnipeg, in the province of Manitoba, barrister-at-law, make oath and say:—

1. I have taken an active part in the discussion of public affairs in this province for over ten years past, and am familiar with the course of provincial politics since the year eighteen hundred and eighty-three.

2. The present provincial government, of which Mr. Thomas Greenway is the head, took office in the month of January, eighteen hundred and eighty-eight. For many years before that time and up to about December, eighteen hundred and eighty-seven, the late Mr. John Norquay had been at the head of the government. He then retired and was succeeded by Dr. D. H. Harrison, who had been one of Mr. Norquay's colleagues and of the same political party with him, and who held office for only a few weeks, when he resigned, and Mr. Greenway became Premier.

3. Between the years eighteen hundred and eighty-three and the end of eighteen hundred and eighty-seven a very active opposition had been offered to Mr. Norquay's administration. This opposition was chiefly maintained by an organization of the Liberals of the province. That organization was at first particularly active in the city of Winnipeg, where a Liberal association was formed in eighteen hundred and eighty-four; afterwards like organizations were formed throughout the province, and eventually a provincial organization.

4. I was for a number of years the president of the association at Winnipeg, as also of the provincial organization, and I was at the time the change of government took place in eighteen hundred and eighty-eight the president of the provincial association.

5. Amongst other things it was charged against the Norquay administration that there was a wasteful expenditure by government in the matter of public printing in the French language, and also that Mr. Norquay had failed to bring before the Legislature

a fair scheme for redistribution of seats in the House, it being charged by Liberals that in the old settlements along the Red River and lower Assiniboine the population had a larger representation than they should have, leaving the western and more newly settled part of the province without sufficient representation.

6. Amongst the electoral districts along the Red River and lower Assiniboine referred to, there were six constituencies which were usually spoken of as, and admitted to be French constituencies, that is in which the French-speaking population had a large majority of the votes, and the fact that the Liberal party were insisting upon a redistribution of seats coupled with their attacks upon the expenditure for French printing led to the Liberals being charged with political antipathy to the French and Roman Catholic population, the great majority of whom throughout the province were at that time supporters of the Norquay regime.

7. At the general election of eighteen hundred and eighty-six, of the six French electoral districts, five returned supporters of Mr. Norquay (three of them being elected by acclamation) and Mr. A. F. Martin, a Liberal, was elected to represent the sixth.

8. One of the districts that then elected a supporter of Mr. Norquay by acclamation was St. François Xavier, which returned Mr. Joseph Burke. The majority of the electors in that district were French speaking and Catholic as the Liberal leaders at all events understood, and they in fact controlled the seat.

9. When Dr. Harrison formed his government the said Mr. Joseph Burke accepted the office of Provincial Secretary in the administration.

10. The Liberal party were at that time confident that the Norquay Government had been considerably weakened as a result of the agitation of the past few years. Mr. Norquay's majority in the legislature was small; it was thought that one or two of his supporters in the House were ready to withdraw their allegiance when a convenient opportunity might arise, and it was the general opinion amongst Liberals that Mr. Norquay's retirement had been brought about and Dr. Harrison put in his place with the view of strengthening the Conservative party, and when the change took place the more active workers in the Liberal organization deemed it essential that a supreme effort should be made to defeat the new administration before it fairly got to work.

11. The opportunity that the Liberals desired seemed to be presented when Mr. Burke went back for re-election on taking office. It was recognized that he was in many respects peculiarly strong in his district. He was a resident merchant in the neighbourhood, and a Roman Catholic; and the French language, as we understood, was his mother tongue. The French-speaking electors in the district had been practically all supporters of the Conservative party, and it was quite impossible to carry the election without receiving a considerable portion of that vote.

12. At the same time certain reasons had led to the Conservative party being weakened in the district, and after full inquiry and consideration it was concluded that there was a fair chance of electing a Liberal candidate if the prejudice that was felt to exist amongst the French speaking and Roman Catholic population against the Liberals for the reasons already stated could be avoided.

13. Eventually Mr. F. H. Francis, an English-speaking merchant resident in or near the district, and a Protestant, entered the field as the Liberal candidate.

14. The question of placing a candidate in the field was considered and the arrangements for the campaign were conducted in Winnipeg and I was present at several of the meetings that were then held for said purposes, and I was familiar with the different considerations which guided us in our conclusions and that led to our support of Mr. Francis.

15. I remember that Mr. Francis expressed himself very strongly during the campaign upon the question of the attitude of Liberals towards the French-speaking population, and especially as to their attitude on the question of interfering with the special privilege claimed by that population in respect to the use of the French language and schools. He gave us to understand, and we were fully convinced, that it was useless to contest the seat unless we could satisfy the electors that the Liberals were not to attack these privileges of the French and Catholic population in the event of their attaining power. It was well understood that this expressed the real attitude of

## Manitoba School Case.

the party on these questions and I was informed that Mr. Francis was expressly authorized by the Liberal leaders to give a pledge to that effect.

16. During the progress of the campaign it came to the knowledge of the Liberal organizers in Winnipeg that a strong appeal was being made to the electors of the district to defeat Mr. Francis because of the fear that the Liberals would interfere with the privileges aforesaid and it was felt that this question must be promptly met.

17. At that time the leading representatives of the Liberals in the legislature were Mr. Thomas Greenway, who afterwards became Premier, and Mr. Joseph Martin who became the Attorney General in his administration, and they were undoubtedly the recognized leaders of the party, Mr. Greenway being the leader in the House. Mr. Martin was at that time resident in Winnipeg and Mr. Greenway was also in the city during the campaign and they both took a very active interest in it. Mr. Greenway chiefly taking charge of that part of the campaign which was conducted in the city, and it was left largely to Mr. A. F. Martin above named to organize and look after the work in the district and especially amongst the French-speaking population.

18. At the request of Mr. Joseph Martin I attended a meeting with him at the Roman Catholic school-house at St. François-Xavier on the evening before the election day. Our special object in attending there was to meet this particular charge as to the attitude of the Liberals towards those particular privileges of the French and Roman Catholic population.

19. It was then well known by the leading Liberals in Winnipeg who were interesting themselves in the campaign that at a meeting held some nights before in another part of the district Mr. Joseph Martin had been present, that Mr. Norquay had addressed the meeting and in very strong terms repeated this charge, and that Mr. Martin had effectively answered the charge by utterly denying that such was or would be the attitude of the Liberals and that he had squarely placed the Liberal policy before the electors as one entirely opposed to any such interference, as was suggested.

20. At the meeting at St. François-Xavier which Mr. Martin and I attended, the large majority of the electors present were at the time said to be and I have no doubt were French speaking and Roman Catholic. Mr. Burke was present and addressed the meeting, and according to my recollection he spoke before Mr. Martin did; at all events the same charges were made by our opponents against the Liberal party and the same appeals to oppose their candidate upon the grounds referred to. Mr. Martin then delivered a strong address to the meeting in which he characterized these allegations as to the attitude of Liberals as being utterly without foundation; he declared in the most positive terms that the Liberals had no thought of interfering with these institutions and made a positive declaration that if they attained office, they would not do so. He referred to my presence there as the president of the Liberal organization for the province, and said that if necessary, I would confirm what he said on the subject. I was not, according to my recollection, called upon to say anything, nor did I make any statement, but I would certainly have confirmed his statement had there seemed to be any occasion for it, and undoubtedly the statement of Mr. Martin, on the question and the pledges that he gave were entirely in accord with the position that I understood the Liberal party held, and they were in accord with what had been stated in Winnipeg at the meetings connected with the campaign, and our purpose in attending the meeting was to make a statement of that character with the view of satisfying the French and Roman Catholic electors.

21. It was never doubted amongst the Liberal leaders, and there is, I think, no doubt of the fact that the defeat at that time of Mr. Burke led to the resignation of the Harrison administration and the advent of the Liberals into power. I know that it was felt, throughout the whole campaign, by the Liberals who took charge of it, that the contest was a crucial one that was to decide which party should for some years in future hold office. We all felt that if Mr. Burke was elected and Mr. Harrison enabled to carry on the work of the session which had then actually opened, he would soon strengthen himself in power, and I have now no doubt that but for the result of that election the Conservatives would have still been in power in the province. It was also universally admitted at the time, and there cannot be a doubt of the fact, that the said election could not have been carried by the Liberals without a considerable number of

the French speaking and Roman Catholic voters, and the declaration of the Liberal policy was made, and the pledges as to the future action of the party given in order to secure that vote.

Sworn before me, at Winnipeg, in the  
province of Manitoba, this 19th day  
of February, A.D. 1895.

JAMES FISHER.

A. N. McPHERSON,

*A Commissioner, &c.*

### EXHIBIT D.

In the matter of the appeal of the Roman Catholic minority of the Queen's subjects in the province of Manitoba to His Excellency the Governor General in Council, from two certain Acts of the legislature of said province, being chapters 37 and 38 of 53 Victoria, intitled respectively "An Act respecting the Department of Education" and "An Act respecting Public Schools."

I, Alphonse Fortunat Martin, of the city of Winnipeg, in the province of Manitoba, Esquire, make oath and say :—

1. During the election contest between the Honourable Joseph Burke, as a member of the Conservative party, and Mr. F. H. Francis, as a member of the Liberal party, in the constituency of St. François Xavier, in the month of January, eighteen hundred and eighty-eight, I was the one appointed by the leaders of the Liberal party to organize and conduct the campaign on behalf of Mr. Francis.

2. I found in conducting the said campaign, that I was being constantly met with the assertion that the Liberal party was opposed to the further continuance of the Catholic schools and the use of the French language, and I thought it was necessary that in some public way, assurances should be given of undoubted character to the electors. For this purpose, I called two meetings, one on the seventh of January, eighteen hundred and eighty-eight, at the schoolhouse, at Le Petit Canada, and the other, on the eleventh of January, eighteen hundred and eighty-eight, at the school house at St. François Xavier, and both in the same constituency. I asked Mr. Joseph Martin, who was then one of the most prominent members of the Liberal party, to be present at both meetings, and to give assurances which I thought were necessary as above mentioned. He made upon each occasion a strong address to the meeting in which he characterized the allegations as to the attitude of Liberals upon the questions aforesaid as being utterly without foundation. He declared in the most positive terms, that the Liberals had no thought of interfering with those institutions; and made a positive declaration, that if they attained office they would not do so; and said that if Liberals did such a thing he would leave the Liberal party for ever.

3. At the meeting on the eleventh day of January already referred to, Mr. James Fisher, who was then the President of the Liberal party in the province of Manitoba, was present during Mr. Martin's speech, and towards the end of Mr. Martin's address he pointed to Mr. Fisher as being the President of the Liberal party, and said that he (Mr. Fisher) would confirm, if necessary, what he had said as to the principles of the Liberal party.

4. The effect of these speeches was very great and to that alone can be attributed the fact that Mr. Francis was elected by the said constituency. Without these assurances given by Mr. Martin there can be no question that Mr. Burke would have been elected by a large majority.

## Manitoba School Case.

5. The Joseph Martin referred to is the same Joseph Martin who became the Attorney General in the administration formed by Mr. Greenway, and it was under the auspices of the said administration and at their instance that the Acts referred to in the caption of this affidavit were passed.

Sworn before me, at the city of Winnipeg, in }  
the province of Manitoba, this 20th day of }  
February, A.D. 1895.

A. F. MARTIN.

HUGH ARMSTRONG,  
A Commissioner.

### EXHIBIT E.

WINNIPEG, MAN., Feb. 21st, 1891.

To the Editor of the *Free Press*,  
Winnipeg, Man.

SIR,—For the reasons hereinafter given, I think the time has arrived when I should make the statement of facts in connection with the election contest between Mr. Jos. Burke and myself in St. François Xavier, in January, 1888, which has been the subject of discussion from time to time in the papers, and I beg that you will therefore publish the following statement of the facts in connection with that election as coming from me:—

I have been a resident of the village of Headingly, in the province of Manitoba, for the past sixteen years, and have there carried on for many years a general mercantile business. I was the Liberal candidate for election to represent the district of St. François Xavier in the legislature of Manitoba, in the election that took place in the month of January, 1888, my opponent being Mr. Jos. Burke, who had been elected to represent the constituency at the general election held in 1886, and who, having at the time referred to, accepted office in the administration formed by Dr. Harrison, had gone back for re-election by his constituents.

I entered into the said contest with the assent and approval of the leaders of the Liberal party in Winnipeg, including Mr. Greenway and Mr. Martin, and also Mr. Fisher, who, as I understand, was president of the Liberal Association for the province.

The election was looked upon as exceedingly important—one which, it was felt, was going to decide whether the Harrison administration should continue in power or not, as it was felt that the Conservative government had been weakened and that Dr. Harrison would be forced to retire should Mr. Burke be defeated.

The constituency was one of the French-speaking constituencies of the province, so called. About two-thirds of the electors in the district were French speaking and Roman Catholic in religion, and it was manifestly impossible to carry the election without securing the votes of a large number of the French-speaking electors.

Mr. Burke had been for many years also carrying on a mercantile business in the near neighbourhood, and was well known in the district. He is himself a Roman Catholic who came from the province of Quebec, and speaks French equally well with English.

Early in the campaign I found that a very serious cry was raised against the Liberal party on the ground, as it was alleged by Mr. Burke and his friends, that the Liberal party if they got into power were likely to pass legislation interfering with the rights and privileges of the French and Catholic population of the province in respect of the use of the French language and as to the schools, and because of my being a candidate of the Liberal party an appeal was made to the French speaking and Catholic electors to defeat me on that ground.

I had certainly never understood or supposed that it had ever been the policy of the Liberal party to interfere with these rights and privileges, and I would most decidedly have been opposed to such an interference, and I felt that unless I took a decided position upon this question it was utterly useless for me to continue in the field as a Liberal candidate.

Because of this, I waited upon Mr. Jos. Martin, then one of the Liberal leaders already named, who afterwards became the Attorney General of the province, and explained to him the situation, and I gave him to understand that unless the attitude of the Liberal party was made clear as not seeking to or intending to interfere with these rights and privileges, I should certainly not remain in the field.

Thereupon, I received assurances from Mr. Martin that satisfied me that the Liberals would not interfere with these rights and privileges, and which enabled me to take that attitude before the electors and to declare it as the attitude of the Liberal party, and I continued in the field and the result was that I was elected.

Mr. Martin himself came into the riding during the campaign and addressed certainly one, and possibly, two meetings at which I was present, and the principal object of his coming out was in order to refute and deny the allegations that were being made by our opponents, as to the alleged attitude of the Liberals upon the questions referred to, and certainly, at one such meeting, he spoke in strong terms denying that it was any part of the Liberal policy to interfere with these institutions, or that it was ever intended to do so, and I believe his statements went a long way to satisfy the minds of the French electors who were inclined to support me, and I believe that because of their being satisfied upon these points through my declarations and those of Mr. Martin, I received their support and secured the election.

It is beyond question that I could not have been elected had no such assurances been given to the electors as aforesaid, and there is no doubt that the immediate result of the election was the downfall of the Harrison administration and the advent into power of Mr. Greenway and Mr. Martin.

At the meeting that I particularly remember, Mr. Martin being present, Mr. Fisher, the president of the Provincial Liberal Association was also present and his presence was referred to as confirming what Mr. Martin stated, and Mr. Fisher either by silence or by nod or language gave consent to Mr. Martin's statements, at all events he was understood by the electors to concur in what Mr. Martin had said.

I have noticed from time to time statements that have been made in the press and in the legislature since the passage of the School-Act of 1890, referring to the pledges given by Mr. Martin in St. François Xavier that I have referred to. I have not up to this time myself made any statement publicly on the question, and I desire to add in this statement that my silence hitherto arose that up to this time the question has been a legal one before the courts, and I deemed it better not to interfere in the matter. I desire also to add that my willingness to make a statement now arises not from a desire on my part so much to help one side or the other in the present contention as to put myself on record as entirely opposed to the agitation for the elimination of religious exercises from the public schools. I would also add that as a large number of the constituents were well known to me and customers at my store I think it just to myself to make the present statement.

Yours truly,

F. H. FRANCIS.



EXHIBIT F.

In the matter of the appeal of the Roman Catholic minority of the Queen's subjects in the province of Manitoba to His Excellency the Governor General in Council from two certain Acts of the legislature of said province, being chapters 37 and 38 of 53 Victoria, intituled respectively : "An Act respecting the Department of Education" and "An Act respecting Public Schools."

I, Joseph Burke, of the city of Winnipeg, but formerly of the parish of St. François Xavier, in the province of Manitoba, merchant, make oath and say as follows :—

1. At the general election for the Legislative Assembly of the province of Manitoba held in the year one thousand eight hundred and eighty-six, I was elected for the constituency of St. François Xavier, by acclamation, as a supporter of the then Norquay administration.

2. In the year one thousand eight hundred and eighty-seven, Mr. Harrison became leader of the government, and he asked me to take the portfolio of provincial secretary in his administration. I accordingly did so, and was sworn in as provincial secretary in such administration about the last of December, one thousand eight hundred and eighty-seven.

3. A writ was immediately issued for an election in my constituency which had become vacant by reason of my acceptance of office, and the election was fixed for the twelfth day of January, one thousand eight hundred and eighty-eight.

4. It was well known that the fate of the Harrison administration depended upon this election, and the Opposition placed in the field as opposed to me Mr. F. H. Francis, a store-keeper at Headingly, in the said constituency.

5. The large majority of the electors in the said constituency were members of the Roman Catholic church. I was a member of that church while Mr. Francis was a Protestant. The Harrison administration belonged to the political party commonly known as the Liberal-Conservatives. Mr. Francis was a candidate on the part of the political party known as Liberals.

6. At and prior to this period it had been frequently charged against the Liberal party that they were not in sympathy with the privileges enjoyed by the French-speaking part of the population and the Roman Catholics, and it was feared by many members of that nationality and religion that if the Liberals came into office that those privileges would be curtailed or entirely abolished. During the election to which I have above referred there was a great deal of discussion as to this attitude of the Liberal party and it was urged by me and many supporters and canvassers on my behalf that the Liberals were opposed to the privileges above referred to.

7. In order to meet these charges, two meetings were called on behalf of the Liberal candidate in the said constituency, one of which was held at a school-house at a place called Le Petit Canada, on the seventh of January, and the other was held at the school-house at St. François Xavier village, on the eleventh day of January. At both of these meetings Mr. Joseph Martin, who was then one of the leaders and one of the most prominent men of the Liberal party, appeared and made a speech to the electors of the said constituency; he made upon each occasion a strong address to the meeting in which he characterized the allegations as to the attitude of the Liberals upon the questions aforesaid as being utterly without foundation. He declared in the most positive terms that the Liberals had no thought of interfering with those institutions; and made a positive declaration that if they attained office they would not do so; and said that if the Liberals did such a thing he would leave the Liberal party for ever.

8. At the meeting of the eleventh day of January, already referred to, Mr. James Fisher, who was then the President of the Liberal party in the province of Manitoba, was present during Mr. Martin's speech, and towards the end of Mr. Martin's address he pointed to Mr. Fisher as being the president of the Liberal party, and said that he (Mr. Fisher) would confirm, if it were necessary, what he had said as to the principles of the Liberal party.

9. The effect of these speeches was very great, and to that alone can be attributed the fact that Mr. Francis was elected by the said constituency. Without these assurances given by Mr. Martin, there can be no question that I would have been elected by a very large majority.

10. The said Harrison administration resigned office on the sixteenth day of said month of January, and such resignation was due entirely to the fact of my being defeated in the said constituency. Mr. Greenway, the leader of the Liberals, was immediately afterwards sent for, and undertook to and did form an administration which has remained in office till the present time.

11. The Joseph Martin above referred to is the same Joseph Martin who became the Attorney General in the administration formed by Mr. Greenway, and it was under the auspices of the said administration and at their instance that the Acts referred to in the caption of this affidavit were passed.

Sworn before me at Winnipeg, in the  
province of Manitoba, this 19th day  
of February, 1895.

JOSEPH BURKE

ALFRED J. ANDREWS,

*A Commissioner in B. R., &c., and Notary Public.*

### EXHIBIT G.

In the matter of the appeal of the Roman Catholic minority of the Queen's subjects in the province of Manitoba to His Excellency the Governor General in Council, from two certain Acts of the legislature of the said province, being chapters 37 and 38 of 53 Victoria, intituled respectively: "An Act respecting the Department of Education" and "An Act respecting Public Schools."

I, William Hogue, of the Parish of St. François Xavier, in the province of Manitoba, make oath and say as follows:—I was an elector of the constituency of St. François Xavier, at the election which took place at that constituency, in the month of January, eighteen hundred and eighty-eight, between the Honourable Joseph Burke on the one hand and Mr. F. H. Francis on the other.

2. I was present at the meeting held in the school-house at St. François Xavier East, in the said constituency, on the day of the said month of January, and I heard Mr. Joseph Martin give assurances to the French and Roman Catholic electors with reference to the Catholic schools and the use of the French language. He said he heard that there was a rumour in the constituency that if the Liberals came into power they would abolish the Catholic schools and the use of the French language; he could well understand why such a thing should be said in a Roman Catholic constituency; but he absolutely denied it, and said there was not a word of truth in it, that it was a most absurd rumour. He positively assured the electors that the Liberal party would never interfere with the privileges aforesaid, and stated that if the Liberals came into power and made any attempt to interfere with their separate schools or the use of the French language, he (Mr. Martin) would leave the Liberal party for ever.

Sworn before me at St. François Xavier, in the  
province of Manitoba, this 22nd day of  
February, 1895.

WILLIAM HOGUE.

P. L'VALLEE,

*A Commissioner in B. R.*

## Manitoba School Case.

### EXHIBIT H.

In the matter of the appeal of the Roman Catholic minority of the Queen's subjects in the province of Manitoba to His Excellency the Governor General in Council, from two certain Acts of the legislature of the said province, being chapters 37 and 38 of 53 Victoria, intituled respectively: "An Act respecting the Department of Education" and "An Act respecting Public Schools."

I, J. P. McDougall, of the parish of St. François Xavier, in the province of Manitoba, make oath and say as follows:—

1. I was an elector of the constituency of St. François Xavier at the election which took place at that constituency in the month of January, eighteen hundred and eighty-eight, between the Honourable Joseph Burke on the one hand and Mr. F. H. Francis on the other.

2. I was present at the meeting held in the school-house at St. François Xavier East, in the said constituency, on the day of the said month of January, and I heard Mr. Joseph Martin give assurances to the French and Roman Catholic electors with reference to the Catholic schools and the use of the French language. He said he had heard that there was a rumour in the constituency that if the Liberals came into power they would abolish the Catholic schools and the use of the French language; he could well understand why such a thing should be said in a Roman Catholic constituency, but he absolutely denied it, and said there was not a word of truth in it, that it was a most absurd rumour. He positively assured the electors that the Liberal party would never interfere with the privileges aforesaid, and stated that if the Liberals came into power and made any attempt to interfere with their separate schools or the use of the French language, he (Mr. Martin) would leave the Liberal party for ever.

Sworn before me at St. François Xavier, }  
in the province of Manitoba, this 22nd day }  
of February, 1895.

JOHN P. McDOUGALL

P. LAVALLÉE,

*A Commissioner in B. R.*

### EXHIBIT I.

In the matter of the appeal of the Roman Catholic minority of the Queen's subjects in the province of Manitoba, to His Excellency the Governor General in Council, from two certain Acts of the legislature of said province, being chapters 37 and 38 of 53 Victoria, intituled respectively: "An Act respecting the Department of Education" and "An Act respecting Public Schools."

I, Norbert Todd, of the parish of St. François Xavier, in the province of Manitoba, make oath and say as follows:—

1. I was an elector of the constituency of St. François Xavier at the election which took place at that constituency in the month of January, 1888, between the Honourable Joseph Burke, on the one hand, and Mr. F. H. Francis, on the other.

2. I was present at the meeting held in the school-house, St. François Xavier East, in the said constituency, on the day of the said month of January, and I heard Mr. Joseph Martin give assurances to the French and Roman Catholic electors with reference to the Catholic schools and the use of the French language. He said that he had heard that there was rumour in the constituency that if the Liberals came into power they would abolish the Catholic schools and the use of the French language.

He could well understand why such a thing should be said in a French Catholic constituency, but he absolutely denied it, and said there was not a word of truth in it, that it was a most absurd rumour. He positively assured the electors that the Liberal party would never interfere in the privileges aforesaid, and stated that if the Liberals came into power and made any attempt to interfere with their separate schools or the use of the French language, he (Mr. Martin), would leave the Liberal party for ever.

Sworn before me at the parish of St. François }  
Xavier, in the province of Manitoba, this }  
twenty-second day of February, 1895. }

NORBERT TODD.

P. LAVALLÉE.

*A Commissioner in B.R.*

## EXHIBIT J.

In the matter of the appeal of the Roman Catholic minority of the Queen's subjects in the province of Manitoba to His Excellency the Governor General in Council, from two certain Acts of the legislature of said province, being chapters 37 and 38 of 53 Victoria, intitled respectively: "An Act respecting the Department of Education" and "An Act respecting Public Schools."

I, Francis Walsh, of the parish of St. Frs.-Xavier, in the province of Manitoba,  
make oath and say as follows:—

1. I was an elector of the constituency of St. François-Xavier at the election which took place at that constituency in the month of January, 1888, between the Honourable Joseph Burke, on the one hand, and Mr. F. H. Francis, on the other.

2. I was present at the meeting held in the school-house, at St. François Xavier East, in the said constituency, on the \_\_\_\_\_ day of the said month of January, and I heard Mr. Joseph Martin give assurances to the French and Roman Catholic electors with reference to the Catholic schools and the use of the French language. He said that he had heard that there was rumour in the constituency that if the Liberals came into power they would abolish the Catholic schools and the use of the French language. He could well understand why such a thing should be said in a French Catholic constituency, but he absolutely denied it and said there was not a word of truth in it, that it was a most absurd rumour. He positively assured the electors that the Liberal party would never interfere in the privileges aforesaid, and stated that if the Liberals came into power and made any attempt to interfere with their separate schools, or the use of the French language, he (Mr. Martin) would leave the Liberal party for ever.

Sworn before me, at the Parish of St. François  
Xavier, province of Manitoba, this 22nd  
day of February, 1895.

FRANCIS <sup>his</sup> x WALSH.  
mark

P. LAVALLÉE.

*A Commissioner in B.R.*

## Manitoba School Case.

### EXHIBIT K.

In the matter of the appeal of the Roman Catholic minority of the Queen's subjects in the province of Manitoba, to His Excellency the Governor General in Council from two certain Acts of the legislature of said province, being chapters 37 and 38 of 53 Victoria, intituled respectively: "An Act respecting the Department of Education" and "An Act respecting Public Schools."

I, Joseph Hogue, of the parish of St. François-Xavier, in the province of Manitoba, make oath and say as follows:—

1. I was an elector of the constituency of St. François-Xavier at the election which took place at that constituency in the month of January, 1888, between the Honourable Joseph Burke, on the one hand, and Mr. F. H. Francis on the other.

2. I was present at the meeting held in the school-house at St. François-Xavier East, in the said constituency, on the                      day of the said month of January, and I heard Mr. Joseph Martin give assurances to the French and Roman Catholic electors with reference to the Catholic schools and the use of the French language. He said that he had heard that there was rumour in the constituency that if the Liberals came into power they would abolish the Catholic schools and the use of the French language. He could well understand why such a thing should be said in a French Catholic constituency, but he absolutely denied it and said there was not a word of truth in it, that it was a most absurd rumour. He positively assured the electors that the Liberal party would never interfere in the privileges aforesaid, and stated that if the Liberals came into power and made any attempt to interfere with their separate schools, or the use of the French language he (Mr. Martin) would leave the Liberal party for ever.

Sworn before me at the Parish of St. François- Xavier, province of Manitoba, this 22nd day of February, 1895.	}                      his JOSEPH + HOGUE. mark
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P. LAVALLEE,

*A Commissioner in B.R.*

### EXHIBIT L.

In the matter of the appeal of the Roman Catholic minority of the Queen's subjects in the province of Manitoba to His Excellency the Governor General in Council, from two certain Acts of the Legislature of the said province, being chapters 37 and 38 of 53 Victoria intituled respectively: "An Act respecting the Department of Education," and "An Act Respecting Public Schools."

I, Gilbert Todd, of the parish of St. François-Xavier, in the province of Manitoba, make oath and say as follows:—

1. I was an elector of the constituency of St. François-Xavier at the election which took place at that constituency in the month of January, eighteen hundred and eighty-eight, between the Honourable Joseph Burke, on the one hand, and Mr. F. H. Francis, on the other.

2. I was present at the meeting held in the school-house at St. François-Xavier East, in the said constituency, on the                      day of the said month of January, and I heard Mr. Joseph Martin give assurances to the French and Roman Catholic electors with reference to the Catholic schools and the use of the French language. He said he had heard that there was a rumour in the constituency that if the Liberals came into power they would abolish the Catholic schools and the use of the French language; he could well understand why such a thing should be said in a Roman Catholic constituency;

but he absolutely denied it and said there was not a word of truth in it, that it was a most absurd rumour. He positively assured the electors that the Liberal party would never interfere with the privileges aforesaid, and stated that if the Liberals came into power and made any attempt to interfere with their separate schools, or the use of the French language, he (Mr. Martin) would leave the Liberal party for ever.

Sworn before me at St. François Xavier,  
in the province of Manitoba, this  
22nd day of February, 1895.

GILBERT TODD.

P. LAVALLÉE,

*A Commissioner in B.R.*

### EXHIBIT M.

In the matter of the appeal of the Roman Catholic minority of the Queen's subjects, in the province of Manitoba to His Excellency the Governor General in Council, from two certain Acts of the legislature of said province, being chapters 37 and 38 of 53 Victoria, intituled respectively: "An Act respecting the Department of Education," and "An Act respecting Public Schools."

I, the Very Rev. Joachim Allard, O.M.I., of the town of St. Boniface, in the province of Manitoba, administrator of the Archdiocese of St. Boniface, make oath and say as follows:—

1. I was during all the year of our Lord one thousand eight hundred and eighty-eight, the Vicar-General of the said archdiocese of St. Boniface, having my residence in the episcopal residence at St. Boniface.

2. I distinctly remember that during the early part of the said year of our Lord one thousand eight hundred and eighty-eight, the Hon. Thomas Greenway, with whom I was not then personally acquainted, called at the said episcopal residence in St. Boniface, in company of Mr. W. F. Alloway, whom I personally knew, and the said Mr. Alloway then introduced the said Hon. Thos. Greenway to me, and the said Mr. Greenway then stated to me that he had called to see His Grace the Archbishop, personally, touching a confidential matter. His Grace was then sick and confined to his bed, and I so informed the said Mr. Greenway, and stated to him that as the vicar-general of His Grace I could receive any confidential communications and communicate the same to His Grace; and I then assured him that he could rely upon my discretion in any confidential communication that he wished to make, and that His Grace the Archbishop would also respect his confidence.

3. The Hon. Mr. Greenway then stated to me that he had been called to form a new government in this province, and that he was desirous to strengthen it by taking into his cabinet one of the French members of the legislature, who would be agreeable to the archbishop; whereupon I remarked that I did not think that His Grace would favour any French member joining the new administration unconditionally, and without any previous understanding as to certain questions of great importance to His Grace. Mr. Greenway replied that he had already talked the matter over with his friends, and that he (Mr. Greenway) was quite willing to guarantee, under his government, the maintenance of the then existing condition of matters with regard:

1. To separate Catholic schools;
2. To the official use of the French language;
3. To the French electoral divisions.

4. I received the assurances of the said Hon. Thomas Greenway, as above stated to me, and I promised him that I would convey the same to His Grace the Archbishop, and I further told him that I believed his assurances so made would give great satisfaction to His Grace. The said Hon. Thomas Greenway then proposed to come again on the

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following day, to receive an answer as to the nomination of the French member of his cabinet; but I told him that I would not put him to that inconvenience, but that I would meet him in Winnipeg on the following day for that purpose; and it was then agreed between myself and him, that such meeting should take place on the following morning in Mr. Alloway's office at the hour of nine o'clock. This finished the first interview I had with the said Hon. Thomas Greenway.

5. During all the time that elapsed between the introduction of Mr. Greenway and the end of the said interview as above set out, and his departure from said residence on that day Mr. W. F. Alloway was personally present and heard all that took place between the said Hon. Thomas Greenway and myself, as above stated by me. In pursuance of my promise, I, on the said day of the interview, visited His Grace the Archbishop, in his bedroom, and reported to him fully and faithfully what had taken place at said interview.

6. His Grace expressed his satisfaction, and instructed me to answer the Honourable Thomas Greenway that he would throw no obstacle in the way of his administration, and that I could say to him that, His Grace would have no objection to Mr. Prendergast being taken into the new cabinet as a French representative, and His Grace particularly requested me to convey to Mr. Greenway the satisfaction given him by the assurance and promise made to me by the said Mr. Greenway.

7. On the following morning, in pursuance of the appointment so made, I attended at the office of Mr. Alloway in Winnipeg, and then again met the said Hon. Thomas Greenway, and I then communicated to him the message of His Grace so entrusted to me as above set out, and Mr. Greenway then expressed to me his personal gratification at the said message and attitude of His Grace, and he then assured me that faith would be kept by his government with His Grace; and then again and in specific terms repeated to me the assurance that

First.—The Catholic separate schools;

Second.—The official use of the French language;

Third.—The number of French constituencies would not be disturbed during his administration.

8. I had promised not to violate the confidence of the Hon. Mr. Greenway by disclosing the particulars of said promises and assurances. But the said assurances have been denied by the said Mr. Greenway on the floor of the legislature, notwithstanding that he had violated the terms of the same before that time, and but for such open denial by him of such promises, and his misstatements of what took place, I would not have felt at liberty to now disclose the same.

9. Mr. W. F. Alloway was present at his office during the second interview with said Hon. Thomas Greenway, as above set out and remained in the room where we were closeted during much of the time during which said second interview lasted.

Sworn before me at Ottawa, in the county  
of Carleton, this twenty-sixth day of  
February, 1895.

J. ALLARD, O.M.I.  
*Administrator.*

T. G. ROTHWELL,  
*A Commissioner in the H. C. J. and a Notary Public  
in and for the Province of Ontario.*

## EXHIBIT N.

In the matter of the appeal by the Roman Catholic minority of the Queen's subjects in the province of Manitoba to His Excellency the Governor General in Council from two certain Acts of the legislature of the said province, being chapters 37 and 38 of 53 Victoria, intitled respectively: "An Act respecting the Department of Education," and "An Act respecting Public Schools."

I, William Forbes Alloway, of the city of Winnipeg, in the province of Manitoba, banker, make oath and say as follows:—

1. In or about the month of January, in the year of our Lord 1888, the Honourable Thomas Greenway, then Premier of the province of Manitoba, with whom I was intimately acquainted had several interviews with me on the subject of the composition of his government which he was at that time forming, and especially as to the attitude of the Roman Catholic Archbishop of St. Boniface and the clergy and members of the Roman Catholic church towards his government; and the said Greenway intimated to me that he was desirous of meeting the said Archbishop of St. Boniface with a view of discussing certain matters with him touching the formation of the government and especially as to the choice of a French speaking member of the government, and as he told me that he was not personally acquainted with the said Archbishop it was arranged that I should introduce him to His Grace for that purpose.

2. Accordingly I accompanied the Honourable Mr. Greenway to the episcopal residence at St. Boniface in said province shortly after said interview took place in order to wait upon the said Archbishop for the said purpose.

3. On reaching the said residence we found that the Archbishop was then unwell and confined to his bed, but we saw the Rev. J. Allard, the Vicar-General of the Archbishop who was informed by Mr. Greenway and me that Mr. Greenway had called to see His Grace the Archbishop touching a confidential matter, whereupon the said Vicar-General said, that as Vicar-General, he could receive any confidential communications and communicate the same to the Archbishop.

4. Thereupon a conference took place between the said Vicar General on the one part, and Mr. Greenway and myself on the other part, in which Mr. Greenway informed the Vicar-General, for the information of the Archbishop, that he had been called upon to form a new government in the province; that he was desirous of strengthening it by taking into his cabinet one of the French members of the legislature, and that he desired to consult the Archbishop as to the person who would be agreeable to him as such French member.

5. Thereupon the Vicar-General intimated that there were certain questions as to which probably the Archbishop would desire to have an understanding before he would favour any French member joining the new government. Mr. Greenway thereupon said that he had already discussed with his friends certain questions which they knew had created uneasiness amongst the French and Roman Catholic population in the province, and that he and his political friends forming the government were quite prepared to undertake that the feelings of the Roman Catholic section of the population upon these questions would be fully respected and that their position upon these questions would be fully sustained.

6. These questions were then talked over between Mr. Greenway and the Vicar-General, the same being questions that had been somewhat warmly discussed during an election contest that had recently taken place in a constituency in the province largely composed of the Roman Catholic and French population.

7. These questions were (first) that of the continuation or abolition of separate schools as hitherto enjoyed by Catholics, (second) as to the use of the French language as an official language in the province, and (third) as to changes in the representation in the legislature of the province which might affect the number of French electoral divisions.

8. Upon all of these questions Mr. Greenway assured the Vicar-General in my presence that his government was prepared to uphold the position of the Roman



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Catholic section of the population and that they would neither interfere with separate schools nor the use of the French language as an official language or lessen the number of French electoral divisions.

9. The Vicar-General assured Mr. Greenway that he would communicate his statements to the Roman Catholic Archbishop immediately, and thereupon an appointment was made for Mr. Greenway and the Vicar-General to meet in my banking office in Winnipeg the following morning.

10. On the following morning pursuant to the said appointment Mr. Greenway and the said Vicar-General met in my office, when the Vicar-General reported that he had seen His Grace the Archbishop who had requested him, the Vicar-General, to convey to Mr. Greenway the satisfaction given him by the assurance and promise that had been made by Mr. Greenway to him in respect of these questions.

11. Some further conversation then took place between Mr. Greenway and the Vicar-General in which the assurance given the day before as to the attitude of the government upon these several questions was substantially repeated.

12. I was present during the whole of the interview on the first day at the episcopal residence in St. Boniface, and I took a particular interest in the discussion because I was very friendly to Mr. Greenway and desirous of seeing his government strengthened, and was desirous of securing the additional support of the Archbishop and the clergy and members of his church, and there is no doubt whatever than an assurance favourable to the position of the Roman Catholic party upon all of these questions was given by Mr. Greenway in the most positive terms.

13. At the interview in my office on the second day I was present the greater part of the time and heard the greater part of the conversation, and there is no doubt whatever that the promises and pledges of the previous day were substantially repeated and that there was a perfect understanding between Mr. Greenway and the Vicar-General as representing the Archbishop, that Mr. Greenway's government would respect and maintain the position of the Roman Catholic party upon all of these questions.

Sworn before me at the city of Ottawa, in the }  
province of Ontario, this day of }  
February, A.D. 1895.

W. F. ALLOWAY.

JOHN S. EWART,  
*A Commissioner, &c.*

### EXHIBIT O.

In the matter of the appeal of the Roman Catholic minority of the Queen's subjects in the province of Manitoba to His Excellency the Governor General in Council, from two certain Acts of the legislature of the said province, being chapters 37 and 38 of 53 Victoria, intitled respectively: "An Act respecting the Department of Education" and "An Act respecting Public Schools."

I, Thomas Alfred Bernier, of the village of St. Boniface, in the province of Manitoba, senator, make oath and say:—

1. In the year 1881 I became a member of the board of education for the province of Manitoba, and being a member of the Roman Catholic Church became also a member of the Roman Catholic section of the said board. In the same year I was appointed by the Lieutenant Governor in Council to act as superintendent of Roman Catholic schools in the said province. I retained my position on the Board of Education and my position as superintendent of Roman Catholic schools until the Education Act of 1890 came into force.

2. By the Manitoba School Act, passed in the year 1881, it was provided amongst other things that the sum appropriated by legislature for common school purposes should be divided between Protestant and Roman Catholic sections of the board of education in certain proportions.

3. Clause 90 of said last mentioned Act provided as follows :—" From the sum or proportion paid to each section there shall first be paid the incidental expenses of that section and such sum to the superintendent of education as the Lieutenant Governor in Council may deem just, and each section of the board may reserve for unforeseen contingencies a sum not exceeding ten per cent of its share of the appropriation," which clause remained in force until the year 1888.

4. In pursuance of the said clause of the said statute, the Roman Catholic section of the board of education did set apart for unforeseen contingencies from year to year a certain portion of the monies received by it from the government.

5. By the provisions of the Act of 1888, the provincial grant instead of being paid over to the different sections of the board were paid direct to the person or persons who might be entitled to receive the money upon the requisition of the respective superintendents of education.

6. Shortly after the passage of the Act of 1888, a demand was made upon me as superintendent of Roman Catholic schools for the payment over to the government of moneys which had accumulated by reason of the said board setting apart for unforeseen contingencies of a portion of the said grant from year to year.

7. The amount at the time under the control of the Roman Catholic section which had so accumulated as aforesaid was the sum of thirteen thousand eight hundred and seventy-nine dollars and forty-seven cents, and the said sum was on the twenty-second day of July, 1889, paid over by the Roman Catholic section to the Provincial Treasurer.

8. In the letter of the Provincial Secretary addressed to me as superintendent of Catholic schools asking that the amount should be paid over there were the following words: "this demand refers only to a detail of internal administration, and in no way to the property of the amount indicated, the amount is decidedly a vested right and will not admit of doubt at any time."

9. Before complying with the said demand the Roman Catholic section passed the following resolution, a copy of which was sent to the Provincial Secretary: "In accordance with the desire of the government expressed in the letter of the Hon. Secretary of State, of the 12th July, 1889, the Catholic section of the Board of Education authorizes its superintendent to hand over to the Provincial Treasurer the sum of thirteen thousand eight hundred and seventy-nine dollars and forty-seven cents being the reserve fund and the balance of all funds in hand for the schools under the direction of the said Catholic section of the Board of Education, in remitting the money the Catholic section takes the respectful liberty of observing:

"The reserve fund was raised and accrued in accordance with the dispositions of the educational acts then in vigour in the province;

"2. This reserve has been made possible because the members of the Catholic section not only administered the school funds with the strictest economy, but also in many instances helped by personal sacrifice.

"3. The property of this reserve fund is a vested right to the Catholic schools of the province, therefore those who administered it until to-day are persuaded that the government will not change its destination and will not on that account diminish the ordinary grants, in accordance with the positive assurance that the government has given us the above mentioned letter of the Honourable Secretary of State."

No part of the said sum of money was ever afterwards drawn by the Roman Catholic section or applied for the purposes of the Roman Catholic schools, but the whole amount remained with the provincial treasurer until the coming in force of the School Act of 1890 and the Roman Catholics have never received any benefit from the said sum of money whatever.

Sworn before me at the city of Ottawa, in the county  
of Carleton, and province of Ontario, this twenty-  
sixth day of February, A.D. 1895.

F. A. BERNIER.

T. R. ROTHWELL,

*A Notary Public in and for the Province of Ontario.*

# Manitoba School Case.

## EXHIBIT P.

### AN ACT RESPECTING SEPARATE SCHOOLS.

HER Majesty, by and with the advice and consent of the Legislative Assembly of the province of Manitoba, enacts as follows:—

1. This Act may be cited as "The Separate Schools Act."

2. The Lieutenant Governor shall appoint, to form and constitute the Separate School Board of Education for the province of Manitoba, a certain number of persons not exceeding nine, all of which persons shall be Roman Catholics.

3. Three of such members, recorded at the foot of the list of the members of the board as entered in the minute book of the Executive Council of the province of Manitoba, shall retire and cease to hold office at the end of each year, which for the purposes of this Act shall be held and taken to be the second day of October annually; and the names of the members appointed in their stead shall be placed at the head of the list, and the three members so retiring in rotation and annually may be eligible for reappointment.

4. The Department of Education may, for the observance of the separate schools,—

(a.) Make from time to time such regulations as they may think fit for the general organization of the separate schools;

(b.) Make regulations for the registering and reporting of daily attendance at all the separate schools in the province subject to the approval of the Lieutenant Governor in Council;

(c.) Make regulations for the calling of meetings from time to time of the department, and prescribe the notices thereof to be given to the members (1881).

5. It shall be the duty of the Board of Education,—

(a.) To have under its control and management the separate schools and to make from time to time such regulations as may be deemed fit for their general government and discipline and the carrying out of the provisions of this Act;

(b.) To arrange for the proper examination, grading and licensing of its teachers, the recognition of certificates obtained elsewhere, and for the withdrawing of license upon sufficient cause;

(c.) To select all the books, maps and globes to be used in the schools under its control and to approve of the plans for the construction of school-houses.:

Provided, however, that in the case of books having reference to religion and morals they shall not be at variance with Roman Catholic doctrine;

(d.) To appoint inspectors who shall hold office during the pleasure of the board (1881).

(e.) To make regulations regarding the selection of school sites, the size of school grounds, and the formation and alteration of all school districts under its care.

(f.) To make and enforce regulations for the establishment and operation of departments in such of its schools as it may deem suitable for the preparation of candidates for the annual examination of teachers and for matriculating at the University of Manitoba, and for the doing of general literary work corresponding to the standard required for these examinations, and to give special aid to such schools from the funds at its disposal, not exceeding in the aggregate one-twentieth of its appropriation; provided that no school shall be entitled to receive such special aid that does not comply fully with the regulations made by the board for its operation; provided further that each such department shall be established only with the consent of the local board of school trustees.

(g.) The board may, whenever they shall see fit, appoint and hold a meeting of such board, in any part of the province, and such meeting shall be as valid as if held in the city of Winnipeg, which shall be the usual place of meeting of such board or section.

## QUORUM.

6. The quorum of the board shall consist of a majority of the members.

7. Any member of the board absenting himself from the meetings of the board for six months, unless from sickness or absence from the province, shall be considered to have *ipso facto* resigned his position, and the superintendent of the board shall notify the Provincial Secretary of the vacancy so caused, and the member appointed to replace him shall hold office only for the unexpired term of the member whom he replaces.

## SUPERINTENDENTS.

8. The Lieutenant Governor in Council shall appoint one of the members of the board to be the superintendent of the separate schools, and the superintendent shall be the secretary of the board.

9. In addition to the duties specified in other clauses of this Act, it shall be the duty of the superintendent, and he is hereby empowered,—

(a.) To call all meetings of the board, and also to call any school meeting required to be held under this Act when the parties who are otherwise invested with the power to do so, either neglect or refuse to exercise it ;

(b.) To have, as the executive officer of the board, the general supervision and direction of the schools, and of the inspectors that may from time to time be appointed ; and to have authority to take measures to enforce and carry into effect all the provisions of this Act and the regulations issued under its authority that relate to the schools within their respective jurisdictions ;

(c.) To give such explanations of the provisions of this or any other School Act, and of the regulations and decisions of the board, as may be required and to enforce the same ; and

(d.) To prepare during the first term of the school year a report to the Lieutenant Governor in Council upon all the schools under his supervision for the previous school year, accompanied with full statistical tables, showing among other things, the number of children of school age in each district, as shown by the census returns for that year, the number who have attended school and the average attendance as shown by the semi-annual returns of the different teachers, and such report shall also contain a statement of the receipts and expenditure of all government money furnished to the board for common school purposes.

10. In case of the absence of the superintendent, he may, with the sanction of the Lieutenant Governor in Council, appoint a member of the board to act for him.

11. It shall be the duty of the council of each municipality to establish, and alter when necessary, the school districts within their own bounds, and in case any school district or proposed district should be included in more than one municipality, its formation or alteration shall be made by the reeves or mayors of such municipalities, and the local inspector or inspectors of schools ; provided that the formation or alteration of school districts by municipal councils or by the reeves and mayors of municipalities and the local inspector or inspectors shall be made under the regulations that may from time to time be issued for that purpose by the Board of Education, and all by-laws and resolutions for forming or altering school districts, shall be submitted to the board and receive its sanction before they can be carried into effect ; provided also that upon the refusal or neglect of any council, or of the reeves and mayors and local inspectors of the municipalities concerned to establish or alter any school district, when petitioned to do so by at least five heads of families resident therein, or upon an appeal against the action of such body forming or altering any school district, the board shall be empowered to confirm or annul the action appealed against, or to form or alter such school district as they may think fit, within three months after their receipt of such appeal or petition ; provided further that no school district shall be organized under this Act unless there shall be at least ten children of school age living within the same, and situated not over three miles from a point that may in anywise be fixed as the first school site.

(a.) It shall be the duty of the clerk of each municipality within one month after the passing of this Act to transmit a description or map included in each school district

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within his municipality to the superintendent under a penalty of five dollars for neglect or refusal.

(b.) The reeves or mayors and the local inspector or inspectors of schools engaged in the formation or alteration of school districts extending within the bounds of two or more municipalities shall be entitled to the same remuneration per day with travelling expenses for their attendance as municipal councillors for attendance at meetings of their respective councils, and each reeve or mayor shall be paid by the council of his own municipality and the local inspector by all the municipalities concerned in equal parts. Provided that in no case the inspector shall be paid a less sum than two dollars and a half per day and ten cents per mile each way for travelling expenses.

12. In case of the readjustment of any school district subsequently to an issue of debentures by such district, and before the said debentures have been fully paid, all lands added to the school district by such readjustment shall thereafter be liable to taxation in common with the remaining portion of the school district for the purpose of meeting payments on such debentures as they become due; and all persons assessed for lands detached from any school district after an issue of debentures in such district and before the said debentures have been fully paid, shall in case of their assessment for the payment of debentures in any other school district, be entitled to receive back all sums for which they may hereafter be assessed for payments on debentures in any school district except that in which they then reside.

13. In all cases of readjustment, the inspector of schools for the district, jointly with one competent person to be appointed by each board of trustees, whose district the readjustment may affect, who shall be non-residents of the said district, shall form a board of arbitration, whose duty it shall be to value the existing school-houses, school sites and other school property or assets within the territories readjusted, and ascertain the respective debts and liabilities thereof; and the said board or a majority of its members shall thereupon adjust and settle in such a manner as they may deem just and equitable, the respective rights, claims and demands of the parties interested; and their award in writing, including their own reasonable costs and charges, may be enforced in the county courts of the province, and which said award shall in all respects be subject to appeal to the Court of Queen's Bench, the same as awards in civil matters.

(a.) The said arbitrators shall be entitled to receive for their attendance at the said arbitration the same remuneration with travelling expenses as paid to municipal councillors for their attendance at meetings of their respective councils, and such payments shall be paid equally by the school districts represented in the arbitration.

14. The school district of any incorporate city or town shall be the same as the territorial limits of the said city or town, except as hereinafter provided, but nothing herein shall prevent the union of a portion of the adjoining municipality or municipalities to a city or town or portion of a city or town for school purposes as provided in section eleven of this Act; and the first school meeting in any city or town or school district, including a city or town after its incorporation, shall be called by the city or town clerk within two weeks after the holding of the municipal elections, or, in case of his failure to do so, by the superintendent as soon afterwards as convenient.

(a.) It shall be lawful for the board to form or subdivide any city or town or any school district which includes or is included in a city or town, into wards for the election of school trustees, such number of wards not to exceed six in any one case, and to determine the number of trustees not exceeding two to represent each ward when the number of such wards is more than one, and to fix the date of the first election of trustees after such formation or subdivision; which election shall take place in each ward at the call of the superintendent, and in such case the trustees that may then be in office will so remain in office only until such election takes place irrespective of the date of their appointment; provided that the existing wards for municipal purposes shall be the wards for school purposes in any city or town until such formation or subdivision is effected by the board; provided further that the board shall have power to maintain its district as it existed before the incorporation of said city or town, or so to extend its district as to include Roman Catholics residing in the vicinity where no separate school is in operation, but in such cases the children of the residents within the city or town limits only shall be computed in the division of school taxes levied on the incorporated bodies within the city or town;

(b.) In portions of the province not organized into municipalities the Board of Education shall have authority to form and alter school districts under its authority, and the trustees of such school districts are hereby empowered to assess the same and to levy and collect taxes therein for the support of their schools.

#### SCHOOL MEETINGS.

15. All school meetings after the first shall be called by the respective boards of trustees, in accordance with the form of notice furnished by the Board of Education.

16. At every school meeting as authorized and required to be held under this present Act, the Roman Catholic ratepayers, or if it is a first meeting in a new district, then the Roman Catholic freeholders and householders present at such meeting, or a majority of them;

(a.) Shall elect a chairman; and the chairman of the meeting shall decide all questions of order, subject to an appeal to the meeting, and in case of equality of votes, he shall give the casting vote, but he shall have no vote as chairman, and the chairman shall take the votes in the manner desired by a majority of the electors present, unless a poll be demanded by any electors present, when he shall be the returning officer;

(b.) Shall elect a secretary; and the secretary shall record the proceedings of the meeting in a book kept for that purpose, and if a poll be held he shall record the names of the voters, and the candidate or candidates for whom each elector votes; and such poll shall be held on the day of such meeting and shall be kept open until four o'clock in the afternoon, unless at any time one hour shall have elapsed without a vote being recorded;

(c.) A copy of the minutes of all school meetings shall be transmitted to the superintendent within ten days after the holding of such meeting.

#### FIRST ELECTION OF TRUSTEES.

17. At the first meeting in any new school district such meeting being duly organized by the election of a chairman and secretary, the majority of the Roman Catholic resident freeholders, and householders present, of the full age of twenty-one years, shall elect three persons who shall be Roman Catholics to be school trustees for such district; and

(a.) The first person elected shall continue in office for two years to be reckoned from the annual meeting next after his election, and until his successor has been appointed;

(b.) The second person elected shall continue in office for one year to be reckoned from the annual meeting next after his election, and until his successor has been appointed; and

(c.) The third and last person elected shall continue in office until the next ensuing annual school meeting, and until his successor has been appointed;

(d.) Until a school tax has been imposed in any organized school district, every Roman Catholic resident freeholder, and householder, of the full age of twenty-one years shall be eligible for the office of trustee, and may take part in any school meeting.

18. In all school districts which include or may hereafter include a city or town not divided into wards for school purposes, there shall be elected three trustees who shall be Roman Catholics, at the first school meeting therein, whose term of office shall be the same as that of trustees elected at the first meeting in rural school districts; and in all school districts divided or hereinafter to be divided into wards for school purposes, there shall be two trustees who shall be Roman Catholics elected for each ward at the first meeting, one of whom shall hold office one year from the next annual school meeting thereafter, and the other until the next annual school meeting, and in each case until a successor has been appointed; the trustee to hold office for the longer term shall be the first nominated if no poll be held; and in case a poll is held, the person obtaining the highest number of votes, and in case there be an equality of votes, the returning officer by his vote shall designate the person to serve the longer term, and afterwards there shall be elected at each annual meeting a number of trustees equal to the number

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of those whose term of office has expired, and these newly elected trustees shall remain in office three years in towns and cities not divided into wards for school purposes, and two years if such are so divided, and in each case until a successor has been appointed.

### SCHOOL MEETINGS.

19. On the first Monday in February in each year a meeting of the Roman Catholic ratepayers of each school district, of the age of twenty-one years, and upwards, shall be called by the board of trustees, by notice posted by them on the school-house, if there be one, or in three public places in the district, at least two weeks in advance; and the majority of the electors present shall choose one or more persons (as the case may be) who are Roman Catholics, to be school trustees for the district, and two auditors, and shall receive and decide upon the annual report of the trustees and the report of the auditors, and transact such other business as may have been set forth in the notice calling the meeting.

(a.) All special meetings of the ratepayers in a school district shall be called by the trustees or the superintendent by posting up notices in at least three public places within the school district at least two weeks previous to such meeting; the business to be considered at such meeting shall be plainly set forth in the notices calling the same, and no other business may be legally transacted at a special meeting but such as may be held in accordance with these provisions.

20. When in a district from any cause the annual meeting has not been held on the first Monday in February, the trustees shall appoint another day for the holding of such meeting; provided that if the trustees fail to call such meeting the superintendent shall call it.

(a.) If within thirty days after the holding of a school meeting a complaint be made in writing to the superintendent regarding the legality or regularity of the proceedings at such meeting, he may cause an investigation to be held, and in his discretion declare the proceedings void, and cause another meeting for the same purpose to be called, or may ratify and confirm such proceedings, and any decision so rendered by such superintendent shall be final.

21. In incorporated cities and towns all annual meetings in each ward shall be held in the first Monday in February in every year, commencing at ten o'clock in the forenoon, and shall be called by the chairman of the board of school trustees. It shall be the duty of the said board to furnish the chairman of every such meeting with a copy of the Roman Catholic voters' list for such ward, and in all cases of cities and towns not divided into wards for school purposes, there shall be but one voting place in such city or town.

(a.) The ratepayers present at the said meeting shall elect a chairman and secretary and shall proceed to nominate a trustee or trustees, who shall be Roman Catholics, to take the place of those whose term of office has expired.

In case the number of nominations does not exceed the number of vacancies to be filled before the hour of eleven o'clock, the chairman shall declare the persons so nominated to be elected; but should the number of persons nominated exceed the number of vacancies to be filled, a show of hands shall be taken and the person or persons having the majority of votes shall be declared elected should no ratepayer present demand a poll.

If a poll be demanded the chairman shall be the returning officer and shall record the votes given, and at four o'clock the poll shall be closed, and the person or persons having the majority of votes shall be declared elected, provided that if one hour elapses during such poll without a vote having been recorded, the chairman shall then declare the poll closed.

(b.) The first meeting of the board of trustees in a city or town shall be held on the day following the annual meeting.

22. Except as provided for in the first election of trustees and in the case of any person or persons who have been included in a school district after the last preceding assessment and levy of taxes within the same, no person shall be entitled to vote at any school meeting whatever, unless he shall have been assessed, and in case an objection be made to the right of any person to vote in a district, the chairman shall, at the request

of any elector present, require the person whose right of voting is objected to, to make the following declaration (or affirmation) :—

"I, A. B., do declare (or affirm) that I am rated on the assessment roll of that portion of the municipality of \_\_\_\_\_ now included in the school district; that I am of the full age of twenty-one years, and that I am legally qualified to vote at this election."

Thereupon the person making such declaration shall be permitted to vote, and not otherwise.

23. In incorporated cities or towns no person shall be entitled to vote at any school meeting for the election of school trustees, on any school question whatsoever, except in the district to which he belongs, and unless his name be upon the revised municipal voters' list for the ward in which he offers to vote; and in case any objection be made to the right of any person to vote in a ward, the chairman or returning officer of the election shall, at the request of any elector present, require the person whose right of voting is objected to, to make the following declaration :—

"I, A. B., do declare (or affirm) that I have been rated on the assessment roll of this school district and that I am legally qualified to vote at this election."

Thereupon the person making such declaration shall be permitted to vote.

#### SCHOOL ASSESSMENT.

24. For the purpose of supplementing the legislative grant it shall be the duty of the council of each municipality to levy and collect each year by assessment upon the whole of the Roman Catholic real and personal property within the municipality (as the case may be) that is liable to taxation under the Municipal Act, a sum equal to twenty dollars for each month that the trustees of each school district wholly or included within the municipality, may declare as hereinafter provided that they have kept and will keep a teacher under engagement at a salary in each of their schools during the current school year; and for each school district partially included within the municipality, they shall levy and collect in like manner a proportionate part of twenty dollars per month, as fixed by the local inspector in the manner hereinafter provided for each of their schools, and the said council may in their discretion levy and collect in like manner an additional sum not exceeding twenty-five per cent of the amount hereinbefore required to be levied.

(a.) From the moneys so levied and collected the council shall, upon the first day of December following, pay over to each school district wholly or partially included in the municipality one-half the sum of twenty dollars per month or the proportion thereof allotted to each district as hereinbefore provided, and upon the thirty-first day of January following shall pay over the whole of the balance due to the said trustees, whether the necessary amount has been fully collected or not from the tax levied for the same. Provided that no board of trustees shall be entitled to receive a larger total amount for the school year than twenty dollars for each month within the same that they have actually had a teacher engaged at a salary in each of their schools, and in case of doubt or dispute as to the number of months, the certificate of the superintendent shall decide;

Provided, further that all rural schools kept in operation over seven months of the school year which have not secured an average attendance of resident pupils of the period of operation equal to forty per cent of the enrolment for the same period, shall be subject, in the discretion of the council or councils concerned, with the consent of the proper superintendent of education and not otherwise, to a reduction not exceeding one-half of the amount otherwise payable for each month it was kept in operation over seven months; and this percentage of attendance may be obtained on the application of any council from the proper superintendent after the close of the last half of the school year.

(b.) It shall be the duties of the trustees of each school district wholly situated in a municipality to lay before the council at its first meeting after the thirty-first day of July in each year a statement of the number of months in the current school year during which they have kept and will keep a teacher engaged at a salary in each of their schools, and before the thirty-first day of January following shall notify the clerk of the



municipality if they have failed to keep a teacher engaged as so stated by them, and in such case give the actual number of months they have had such teacher engaged ;

(c.) It shall be the duty of the trustees of each school district that extends within the bounds of two or more municipalities or of a city or town and rural municipality to obtain from the last revised assessment roll of each municipality concerned a copy of that part of the said roll relating to the school district as included within the three miles limit as defined in this Act, and forward the said copies before the first of July to the local inspector with a statement of the number of months in the current school year during which they have kept and will keep a teacher under engagement at a salary in each of their schools, and the amounts of their estimates exclusive of the legislative grant required for the use of their schools, and the said inspector shall equalize the rate of assessment of the portion of each municipality included within the school district as hereinbefore described and shall allot to each municipality its due proportion of the sum of twenty dollars per month of the current school year that the said trustees have declared their school has been and will be kept in operation, and shall send notice thereof by mail to the clerk of each municipality concerned before the fifteenth day of July, and the said inspector shall in like manner allot the remainder of the trustees' estimate and return the copies of the rolls with his equalization and an allotment duly made out thereon to the trustees, and the said trustees if they fail to keep a teacher under engagement during the school year for the full time stated by them shall before the thirty-first day of January following notify the local inspector of the actual time, and he shall make another allotment based upon such time, and notify each council concerned, and the said trustees and the said inspector shall be entitled to receive from the trustees for each allotment made as hereinbefore required the sum of five dollars. And the said inspector shall be empowered, if he deem the amount of the trustees' estimate over and above the municipal levy to be excessive or improper, to demand an explanation thereof from the trustees, and in his discretion to reduce the said amount with the consent of the superintendent, and not otherwise.

(d.) Any board of school trustees that fails to notify their council or the local inspector (as the case may be) in due time of the number of months their school is to be kept in operation during any school year as hereinbefore required, shall not be entitled to receive a larger amount in such year from the municipal levy than the council or the local inspector (as the case may be) may in their discretion fix for them, and any board of trustees failing to keep a teacher under engagement the full time stated by them shall not be entitled to receive their second instalment of school moneys due on January thirty-first until they have notified the clerk of the municipality of the actual time such teacher has been under engagement, and any board of trustees wilfully making a false statement in regard to such time shall forfeit their second instalment.

(e.) Any moneys collected by a council from a general levy for school purposes that remain over in any year after all due payments therefrom have been made to the school districts entitled to the same, shall be deposited in some chartered bank by the said council and afterwards used only to pay or advance moneys to school districts within the municipality in the year or years following, unless the proper section of the Board of Education shall require the same moneys or any portion of them to be paid over at any time to any school district or school districts wholly or partly included in the municipality that the said board may consider in especial need of such assistance.

(f.) In levying an assessment for separate school purposes the council of each municipality shall assess all lands the denomination of whose owners as Catholics or non-Catholics cannot be ascertained before the time of making such levy in the manner provided in section 27 of this Act.

25. For the purpose of supplementing the legislative grant and the municipal levy it shall be the duty of the board of trustees of each school district wholly or partially included in a rural municipality before the first day of July in each year at a meeting of the said board, to make an estimate of the sum over and above the amount of the said legislative grant and municipal levy that they shall require for school purposes during the current school year, and resolve whether the said estimate shall be collected by the municipal council or councils concerned, or by a collector or collectors appointed by the said board.

(a.) In case the board of trustees resolve to levy and collect by their own authority the amount of their estimate, it shall be the duty of the said board, if their school district be wholly included in a single municipality, to obtain a copy of the last revised assessment roll of that portion of the municipality that includes all the lands liable for taxation for their school within their school district, and these lands shall be such within the district as are wholly included within a distance of three miles in a direct line from the school-house or site, and each quarter section or parish lot partially included within the same, except such as may contain a residence, the occupant of which must travel four miles or over by the public road from it to reach the school-house, and the said board of trustees shall then strike and levy a rate for raising the amount of the said estimate and place the amount of tax to be collected from each person or property included within the aforesaid limit opposite his name, or the description of his property, and place the roll in their collector's hands for collection, and such roll handed to him shall be his warrant for the collection of the taxes entered upon the same, and in collecting he shall possess and be vested with the same power and authority, and be subject to similar obligations and penalties as a collector employed by the municipality. The said collector may be the secretary-treasurer of the trustees or some other person not a trustee, and his remuneration shall in no case exceed five per cent of the amount collected; and if the secretary-treasurer act as collector his remuneration for both offices shall not exceed the amount fixed for the office of the secretary-treasurer by this Act. The said collector shall give security to the satisfaction of the trustees for the faithful performance of his duties to the amount of the trustees' estimates, and if such security be not given the trustees shall, *ipso facto*, be his sureties.

(b.) The said collector shall pay over the taxes as collected to the secretary-treasurer, and shall return his roll to the trustees on or before the thirty-first day of January following his appointment.

(c.) In case the school district is included within the limits of two or more municipalities, whether city, town or rural municipalities, the trustees shall levy and collect the amount of their estimate according to the allotment made for them upon the equalized assessment rolls returned to them by the local inspector in the same manner, under the same conditions, and with the same powers given by this Act to trustees of school districts wholly included within the limits of a single municipality for the collection of their estimates.

(d.) In case the board of trustees resolve to have their estimates levied and collected by the council or councils of the municipality or municipalities in which their school district is wholly or partially included, they shall transmit a copy of such resolution with the amount of their estimate, or in the case of school districts included within the limits of two or more municipalities the proportion of their estimate allotted by the local inspector to the council of the municipality concerned, at or before its first meeting after the thirty-first day of July of the year in which such estimate is made, and it shall be the duty of the council of such municipality, employing their own lawful authorities, to levy and collect such estimate or proportion thereof upon the real and personal property within the three miles limit, in each school district as hereinbefore described and pay the whole amount so collected to the trustees at the dates upon which they are required to pay them the amounts due from the municipal levy. Provided that in the case of any school district wholly situated within a municipality the council shall be empowered if it deem the estimate of the trustees for the special rate excessive or improper, to demand an explanation thereof from the trustees and in its discretion to reduce the said estimate with the consent of the superintendent, and not otherwise.

(e.) For the purpose of collecting the arrears of school taxes for any year, the trustees of any school district wholly or partially included in a city, town or rural municipality may, in any year, transmit a list of such arrears to the council of the municipality concerned with the estimate of the taxes to be collected for them, for the current school year, and thereupon the said council shall levy and collect the said arrears and pay them over to the trustees on the same dates as they are required to pay over their taxes collected for the current year. The trustees may, employing their own lawful authority, bring a suit in a court of competent jurisdiction for the collection of

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such arrears whether they had been assessed by the said trustees or by the council of the municipality.

(f.) In all cases where the assessment of personal property is mentioned in the Separate Schools Act it shall be held to mean personal property liable to assessment under the Municipal and Assessment Acts.

(g.) The whole or any portion of any school tax levied upon any land that has been due and unpaid for more than one year after the 31st day of December of the year when the rate for the same was struck, shall be liable to be sold for taxes in the manner provided by the Municipal and Assessment Acts, for the sale of land for taxes; and it shall be the duty of each municipal collector or treasurer, as the case may be, to include such lands in all lists of lands submitted by him to the mayor or reeve for authentication; provided that in cases where school trustees levy the school tax by their own authority, it shall be the duty of their secretary-treasurer to supply the council with a certified list of lands, liable to sale for arrears of school taxes from time to time, and it shall be the duty of each council, upon receiving the proceeds of any sale of lands, for school taxes, forthwith to hand the said proceeds over to the school trustees entitled to the same, less the costs of such sale, interest and the excess over the amount of the school tax.

(h.) All the general school and the special school tax, actually collected remaining unpaid to the trustees by a council after date fixed by this Act for payment of the same shall be a debt due by such council to the trustees, except arrears of taxes levied by the authority of the trustees themselves.

26. The school assessment shall be laid equally according to valuation upon ratable real and personal property of Roman Catholics in the school district and shall be payable by and recoverable from the owner, occupier or possessor of the property liable to be rated, and shall, if not paid, be a special mortgage and not requiring registration to preserve it, on all real estate and a special charge and lien upon all personal property except live stock and farming implements to the value of five hundred dollars belonging to *bona fide* owners of real estate of at least forty acres.

27. The corporations situated in a locality where both public and separate school districts are established, shall be assessed only for the school district of the majority; yet out of such assessment the council of the local municipality, city or town, shall give to the school district of the minority a part of such assessment in proportion to the number of Catholic or non-Catholic children of school age, as the case may be, according to the census.

28. The following real and personal property shall be exempt from taxation under this Act:

(1). Real estate held in trust for Her Majesty, or for the public uses of the province;

(2). Real estate vested in or held in trust for the municipality, and used for municipal purposes;

(3). Real estate held in trust for any tribe or body of Indians;

(4). Every place of public worship, churchyard, burying-grounds, educational or charitable institution, public roadway, square, jail, hospital, agricultural and horticultural societies, with the land requisite for the due enjoyment thereof;

(5). Lands allotted by the Dominion Lands Act to half-breed children of heads of families under the age of eighteen years, not disposed of by them.

29. The Roman Catholic ratepayers of a school district including religious, benevolent, or educational corporations, shall pay their respective assessments to the separate schools; and in no case shall a non-Catholic ratepayer be obliged to pay for a Catholic school, or a Catholic ratepayer for a non-Catholic school.

30. When property owned by a non-Catholic is occupied by a Catholic and *vice versa*, the tenant in such cases shall only be assessed for the amount of property he owns, whether real or personal, but the school taxes on said rented or leased property shall in all cases, and whether or not the same has been or is stipulated in any deed, contract or lease whatever, be paid to the trustees of the schools to which the owner of the property so leased or rented ought to pay and to no other, subject to the exceptions aforesaid.

31. Wherever property is held jointly as tenants or as tenants in common by two or more persons, the holders of such property being non-Catholics and Catholics, they shall be assessed and held accountable to the two boards of school trustees for the amount of taxes in proportion to their interest in the business, tenancy or partnership respectively, and such taxes shall be paid accordingly.

32. In incorporated cities and towns no rate shall be levied at any general or special meeting, for the building, repairing or improving of a school-house, to exceed in any one year one cent on the dollar, on the ratable property in the district.

#### SCHOOL TRUSTEES.

33. The school trustees in each school district shall be a corporation under the name of "The school trustees for the separate school district of \_\_\_\_\_ number \_\_\_\_\_ in the province of Manitoba; and it shall be lawful for the Board of Education to assign a name and a number to designate each school district under its authority. The trustees of each school district shall have perpetual succession, and a common seal, if they think proper to have one; they may sue, and be sued, and shall generally have the same powers which any other body politic or corporate has or ought to have with regard to the purposes for which it is constituted.

34. Except as elsewhere provided the time of holding office as school trustee shall be three years. Provided that the trustees in any year elected shall remain in office until their successors are elected.

35. Every trustee after his election and before he shall be entitled to sit or vote as such at any meeting of the board, shall make before the chairman of the school meeting at which he was elected, or before a justice of the peace, a declaration, which he shall produce and deposit with the secretary-treasurer of the board, and which shall be in the following form:

"I, A. B., do solemnly declare that I will truly, faithfully, and to the best of my ability and judgment, discharge the duties of the office of school trustee for the Catholic school district of \_\_\_\_\_ to which I have been elected.

"Dated at \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_

"Taken before me, &c.,

"C. D.

J. P. (or chairman, as the case may be)."

36. The school trustees shall meet within ten days after receiving notice of their election for the purpose of choosing a chairman and a secretary-treasurer and transacting such other business as may be required.

(a.) In case of absence of the chairman from any meeting of the board, the then assembled school trustees shall elect one of their number to act in that capacity for the time being, who shall then be vested with the same powers and privileges as the ordinary chairman.

37. In the meetings of the school trustees all questions shall be decided by the majority of votes, and the chairman shall have the right to vote, but in case of an equality of votes the question shall be decided in the negative.

38. It shall be the duty of the board of trustees:

(a.) To take possession and have the custody and safekeeping of all school property which has been acquired or given for school purposes under this Act in their district, and such corporation shall be empowered to acquire and hold, as a corporation, by any title whatsoever, any land, movable property, moneys or income for school purposes, and to apply the same according to the terms on which the same was acquired or received, but they shall not, without the sanction of the board, have power to alienate or dispose of any school real estate;

(b.) To do whatever they may judge expedient with regard to building, repairing, renting, warming, furnishing and keeping in order the school-house or school-houses in their district, its furniture and appendages, and the school land and inclosures held by them, and for procuring apparatus and school books for their school, and when there is

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no suitable school-house belonging to the district or when a second school-house is required, then, to build, rent, repair, furnish, warm and keep in order, a house and its appendages, to be used as a school-house ;

(c.) To contract with and employ such teachers exclusively who hold certificates from the board, and such contract shall be in writing and signed by the contracting parties ;

(d.) To provide for the salaries of teachers, and all other expenses of the school ;

(e.) To visit the school once a month, for the purpose of seeing that it is conducted according to the prescribed regulations ; and the school trustees, or any of them, shall, if necessary, make any suggestions in accordance with the said regulations, with a view to the more effectual working of the school, and should the teacher fail to act upon them, the matter shall be referred to the whole body of trustees, who shall report to the superintendent :

(f.) To see that the discipline of the school is properly enforced ; at duly called meetings of the board of trustees to expel the unmanageable pupils on the complaint of the teacher ; and hold meetings to inquire into the same ;

(g.) To keep a record of their proceedings, signed for each sitting by the chairman and secretary, and also correct accounts of their receipts and expenditures, with reference to the school or schools under their control, mentioning especially what relates to each school, and such account shall be at all reasonable hours open to the inspection of the ratepayers of the school district ;

(h.) To admit as pupils of the school any children whose parents or guardians are not assessed and do not pay the special tax for one-fourth of the estimated expenses of the school as provided in sections 24 and 25 of this Act, and to charge and collect a sum not exceeding fifty cents per month for each such pupil ;

(i.) To have their schools in operation for at least six months every year when there are not less than ten children of school age in their district ;

(j.) To transmit to the superintendent the half-yearly and annual reports and the census returns, required by him, on the forms provided, and to cause their books and accounts at any time to be laid open to his inspection, or to that of any person appointed by him for that purpose ;

(k.) To call special meetings for any purpose whatever, whenever required to do so by the majority of the ratepayers or by the superintendent.

39. No act or proceeding of a board of trustees shall be deemed valid or binding on any party which is not adopted at a regular or special meeting of the corporation, of which notice shall have been given either by one of their body or the person chosen by them to act as a secretary-treasurer, to all the trustees, and a majority of the trustees at such meeting shall have full authority to perform any lawful business.

40. It shall not be lawful for any trustee to enter into a contract with the corporation of which he is a member, or to have any pecuniary claim on such corporation, except for a school site, or as a secretary-treasurer, and then only when he shall have been appointed by the other two members of the corporation.

41. No school trustee shall be teacher or inspector of any school in his school district.

42. Any person elected to the office of school trustee who refuses to serve as such shall forfeit the sum of five dollars for the use of the school district, and his neglect or refusal to take the declaration of office within one month after his election, if resident at the time within the district, shall be construed as such refusal, after which another person shall be elected to fill the place ; but no school trustee shall be re-elected except by his own consent during the four years next after his going out of office.

43. Any person chosen as trustee may resign with the consent expressed in writing of his colleagues in office, and a continuous non-residence of three months shall cause the vacation of his office.

44. In all cases of vacancy another trustee shall be elected at a meeting called by the trustees or trustee remaining in office, and the person so elected shall hold office for the unexpired term of the trustee whom he replaces ; provided that if the vacancy is not filled within one month, the superintendent shall appoint some qualified person to fill it.

45. In all cases of prolonged incapacity arising from sickness, no election or appointment to fill the said office shall take place unless the said incapacity has been established by the certificate of a physician, deposited with the secretary-treasurer, and the vacancy arising from such incapacity shall date from the day of the deposit of such certificate.

46. The board of school trustees or their secretary-treasurer shall have at all times during office hours free access to the assessment roll of the municipality, and they shall be permitted to copy therefrom that portion of it having reference to their respective school districts, together with the names and amount for which each individual is assessed.

47. If any trustee in cities and towns shall absent himself for three months from the meetings of the board of school trustees, without being authorized so to do by a resolution of the board, or if he ceases to reside in the school district for a period of three months consecutively, his seat shall thereby become vacant.

#### DISQUALIFICATION OF SCHOOL TRUSTEES.

48. Except as provided in clause seventeen, no person shall be eligible to be elected or to serve as a school trustee who is not a resident ratepayer of the district which he proposes to represent, and a Roman Catholic.

49. No person convicted of felony or of an infamous crime shall be eligible to be elected as a school trustee.

#### SECRETARY-TREASURER.

50. The trustees shall appoint as secretary-treasurer one of their own number, or some other competent person, and the duties of such secretary-treasurer shall include :

(a.) The correct and safe-keeping and producing (when called for) of the papers and moneys belonging to the corporation;

(b.) The correct keeping of a record of all their proceedings in a book procured for that purpose; and

(c.) The collecting, receiving and accounting for of all school moneys, whether from the government or otherwise, for the purpose of public school education within his district and the distributing of such moneys in the manner directed by the majority of the trustees.

51. Every secretary-treasurer shall before entering upon his duties as such give security to the school trustees by a bond signed and acknowledged before a justice of the peace, and such security shall be given by at least two solvent sureties, jointly and severally, to the satisfaction of the board of school trustees, and for the total amount of the moneys for which the secretary-treasurer may at any time be responsible, whether arising from the local school fund or from any particular contribution or donation paid into his hands for the support of schools, and such security shall be renewed or changed whenever its renewal or change is required by the school trustees.

(a.) In school districts in which the secretary-treasurer has not given such security the trustees shall be personally liable and responsible for any loss that may be caused through his default, except in case they shall, within three months from the date of their election as trustees or his appointment as secretary-treasurer, enter a written protest against the refusal of the majority to exact such security.

52. When the assessment is made by the trustees, the secretary-treasurer shall receive the assessment roll from the assessors, and shall thereupon notify each person whose name appears on said roll of the amount for which he is assessed, and such assessment roll shall be open at all reasonable hours to the inspection of any Roman Catholic ratepayer of the school district, and every such ratepayer shall be entitled to receive a copy thereof on payment to the secretary-treasurer at the rate of five cents per name on such roll;

(a.) The secretary-treasurer shall notify each person whose name appears on the assessment roll of the date and the place fixed by the school trustees for the sitting of the court of revision;

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(b) The secretary-treasurer shall within one month after receiving the assessment roll from the assessors lay the same before the board of trustees, and after the said board have struck the rate he shall receive the roll from them for the purpose of collection.

53. Every secretary-treasurer shall prepare and submit to the board of school trustees annually, previous to the general meeting of the ratepayers, a detailed statement of receipt- and expenditures of the school district for the current school year then expiring, and such statement after being approved by the school trustees shall be by them submitted at the annual meeting of the school district, and the secretary-treasurer shall on the payment to him of the sum of one dollar, furnish to any ratepayer a copy of such statement.

54. The remuneration of the secretary-treasurer may, in the discretion of the school trustees, be fixed at any amount not exceeding eight per cent on the moneys received by him in such capacity, but such remuneration shall include every service which the trustees may require from time to time from the secretary-treasurer, and shall cover all contingent expenses whatever, except such as may be specially authorized by rules and regulations of the Board of Education, and shall not in any case exceed the sum of one hundred dollars.

55. It shall be the duty of the board of trustees of cities and towns, and they are hereby empowered :

(a.) At their first meeting after the annual meeting of ratepayers, or at some subsequent meeting, to elect one of their number as chairman, and to appoint one of their number or some other person as the majority of the board may decide to be their secretary-treasurer, to determine the amount of salary to be paid to such officer, and to impose by by-law such additional duties as may be required of him by the board of trustees, and his appointment shall in all other respects be subject to the same duties, obligations and penalties as are imposed by this Act in the appointment of secretary-treasurers in rural school districts;

(b.) To appoint, if they think proper to do so, a collector or collectors of school taxes for the city or town, who shall discharge similar duties and be subject to similar obligations and penalties and have the full powers and authority as a collector of a municipality ;

(c.) If they deem it advisable to do so, to make an estimate of the sum or sums required for educational purposes of the school district during the current school year ; to obtain a copy of the last revised assessment roll of the city or town that relates to properties liable to taxation for separate school purposes within the school district ; to strike and levy a rate for the raising of the amount of the said estimate upon such assessment, placing the amount of tax payable opposite the name or description of each person or property assessed ; and to place the said assessment roll in their collector's hands for collection, and he shall be empowered to collect the same in the same manner as any collector of a municipality ;

(d.) In case they deem it advisable to do so, to provide the clerk of the city or town before the 1st day of May in each school year, with their estimate of the amount required in such year by them for educational purposes, and accompany such estimate with a list of the names of the persons, or a description of the properties liable to be assessed for the support of the separate schools of which the board applying are trustees, and it shall be the duty of the council of such city or town to levy and collect the amount demanded and add a separate column for school taxes to their collector's roll, and to pay over such taxes monthly to the trustees as collected ;

(e.) To demand and obtain from the council of the city or town, if they deem it expedient to do so, a list of all uncollected school taxes for the current or for any previous school year, and it shall be the duty of the council to furnish such a list in compliance with such demand, and the said board may place such list in the hands of a collector appointed by them, whose powers, duties and obligations in collecting the same shall be the same as those of any collector of the municipality, and the said trustees may bring suit for the collection of all arrears of school taxes in a court of competent jurisdiction, whether the said arrears had been assessed by them or by the council of the municipality :

(f.) To collect at their discretion from the parents or guardians of children who do not reside or are not assessed within the school district, a sum not exceeding one dollar per month for each pupil attending their schools, and if they think proper so to do to supply all the pupils attending their schools with the necessary text books and other school requisites and to collect from their parents or guardians a sum not exceeding 20 cents per month for each pupil in payment for the same ;

(g.) To submit the books and accounts of their secretary-treasurer annually to the examination of the city or town auditor, or two auditors appointed by the board for that purpose, and to publish in one or more public newspapers or on printed sheets for the information of the public, on or before the 15th day of January in each year, a detailed statement of the receipts and expenditure of all school moneys for the current year and of the assets and liabilities of the board, with the certificate of the said auditor or auditors as to the correctness of such statement ;

(h.) To make all the returns required by the Department of Education or by the Board of Education upon the forms provided and within the time specified by the Department of Education or the board requiring the same ;

(i.) To require the officers and teachers to comply with the law and regulations of the Board of Education in the attendance and classification of pupils and the arrangement of their school exercises, the certification and duties of teachers, the arrangement of school rooms and their furniture, and the use of text books and apparatus ;

(j.) To purchase or rent school site or school premises, and rebuild, furnish, repair, warm and keep in order the school-houses and appendages, lands, inclosures, and movable property of the school district, and to provide registers in the prescribed form, suitable maps, apparatus, text and prize books for the schools, and if they deem it expedient, to establish and maintain school libraries ;

(k.) To determine under the direction and authority of the board the number, kind, grade and description of schools (such as male, female, infant, central or ward schools) to be established and maintained, the teachers to be employed, the terms upon which they are employed, the amount of their remuneration, and the duties in addition to those prescribed by the Board of Education, which they are to perform ;

(l.) To appoint with the concurrence of the Board of Education, an inspector or manager of the schools within the jurisdiction whose duty shall be, by frequent visits to the schools and in every other way to do all in his power to improve their character and efficiency ; he shall have control of the organization and management of the schools of such city or town, and report monthly to the trustees as to their condition and progress, but the schools of such city or town shall be under the supervision of the inspector appointed by the Board of Education for the county in which the city or town is situate except that in cities or towns in which a collegiate department is or may be established, the collegiate inspectors shall have such supervision and report half-yearly to the superintendent ;

(m.) To establish with the consent and not otherwise of the Board of Education and to conduct in accordance with the regulations of the same, a collegiate department for the preparation of students for matriculation in the University of Manitoba, for the preparation of students for first and second class teachers' certificates, and for the purpose of laying the foundation of a thorough education in the English or French language and literature ;

(n.) To exercise all the powers and perform all the duties not herein specified, and not inconsistent with those provisions that are given to the trustees of rural school districts by this Act.

#### PROSECUTION BY OR OF SCHOOL TRUSTEES.

56. The school trustees of any school district may institute suits, or prosecutions for the school assessments, assessment for school-houses, and for all arrears of the said assessments and monthly fees, and such suits or prosecutions may be instituted before the county court or before two justices of the peace of the county, and the justices may after judgment cause the amount of the judgment, together with the cost thereof, to be levied under warrant by the seizure and sale of the goods and chattels of the defendant,



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such seizure and sale to be effected by the secretary-treasurer, who shall for that purpose have and execute the power of sheriff, and who shall be entitled for such services to the same fees as the said officer.

57. In all such suits or prosecutions judgment may be rendered with costs, and no judgment rendered on any such suit or prosecution shall be liable to be appealed from, nor shall any such suit or prosecution be removed by writ of certiorari.

58. No member of any board of school trustees shall engage in any suit at law as such trustee, as plaintiff, without a special authorization from the trustees, duly entered in the minutes, after deliberation; and every such action may be brought either by the chairman or by the secretary-treasurer, in the name of the corporation, as the board may see fit.

59. All persons entrusted in any manner with the carrying of this Act into effect, or qualified to vote at the election of school trustees, shall be competent to institute proceedings under this Act except in cases where it is specially provided to the contrary.

60. All contestation with regard to the election of school trustees and to the functions and powers assumed by school trustees or any of them, or their officers, or by any person or persons claiming to be such trustee or trustees, or officer or officers, may by any competent person be brought by a petition setting forth the case, of which a copy must have been served on the parties concerned, before the county court at its next sitting, and shall then be determined in a summary manner on the evidence adduced.

But no resolution, by-law, proceeding or action of any board of trustees shall be invalid or set aside by reason of any person whose election has been annulled or declared illegal having acted as a trustee.

61. Any school trustee whose election has been obtained by fraud or stratagem or by the votes of persons not qualified as electors, or any person usurping the functions of school trustee, or illegally holding that office, may be summarily prosecuted at the instance of any party interested or several collectively interested, before any one of the judges of the county court of the county in which such election, usurpation or illegal retention of office has taken place, for the purpose of declaring such election, or such retention of office, illegal and such seat vacant.

62. It shall be the duty of any judge of the Court of Queen's Bench or of the county court of this province, or any stipendiary magistrate, to investigate and decide any complaints which may be made in the manner provided by the statute in that behalf, in regard to the election of any school trustee, or in regard to any proceeding at any school meeting; provided always that no complaints in regard to any election or proceeding at any school meeting shall be entertained unless made in writing within twenty days after the holding of such election or meeting. The costs and expenses of such investigation shall be paid by the parties concerned in it, as such judge or magistrate may decide, but such judge or magistrate shall not be entitled for his own services, expenses to a greater sum than five dollars per day for each day actually engaged in such investigation.

63. The school trustees shall be constituted a court of revision for hearing and deciding any complaints that may be made against any assessment made under their authority, and shall sit as such at any time fixed by the trustees after eight days' notice given by posters in three public places of the district by the secretary-treasurer; and the decision of the said court of revision shall be final when the amount to be paid shall not exceed twenty dollars; and the members of the said court of revision shall be empowered to administer oath while sitting as such; and every appeal from the decision of such court of revision shall be heard and determined finally at the next sitting of the county court within the jurisdiction of which the school district is situated.

### QUORUM.

64. The quorum of any corporation, board or body constituted under this Act shall (unless otherwise expressly declared) be an absolute majority of all the members thereof; and the majority of the members present at any meeting regularly held at which there shall be a quorum may validly exercise the powers of the corporation.

## ASSESSORS.

65. The school trustees may within twenty days after the annual school meeting, appoint one or more assessors from the resident ratepayers, provided the district is not included within a municipality, or the municipal council refuses or neglects to do so, and such remuneration shall be paid to such assessor as the board shall see fit.

66. Before entering upon the discharge of their duties such assessors shall be sworn before a justice of the peace to the faithful discharge of their duties, and they shall, within two weeks after their appointment, proceed to make out an assessment roll of the ratable property of each Roman Catholic ratepayer in the school district, and shall deliver the same into the hands of the secretary-treasurer of the school trustees within one month thereafter.

## AUDITORS.

67. At every annual meeting of any rural school district there shall be appointed by the ratepayers two auditors, or persons to examine the accounts of the secretary-treasurer or of the school trustees and report thereon at the next annual meeting, and who shall certify to the correctness or otherwise of such accounts.

(a.) It shall be the duty of the secretary-treasurer to submit his books and vouchers to such auditors when called upon by them to do so. And their report shall be presented to the annual meeting next after their appointment.

68. It shall be the duty of every teacher employed by any board of school trustees—

(a.) To teach diligently and faithfully all the branches required to be taught in the schools according to the terms of his agreement with the school trustees, and in accordance with the laws of Manitoba relating to separate schools, or any by-laws or regulations issued under the same ;

(b.) To keep in the prescribed form the register of the school ;

(c.) To maintain proper order and discipline in his school ;

(d.) To keep a visitors' book (which the trustees shall provide) and enter therein the visits made to his school, and to present such book to every visitor and request him to make such remarks suggested by his visit ;

(e.) To give the trustees and visitors access at all times when desired by them to the registers and visitors' book appertaining to the school ;

(f.) To deliver up any school registers, visitors' book, school-house key or other school property in his possession on the demand or order of the board of school trustees employing him ;

(g.) To have at the end of every half year at least a public examination of his school, of which he shall give due public notice ;

(h.) To furnish to his superintendent or to the inspector any information which it may be in his power to give respecting anything connected with the working of his school, or in anywise affecting his interests or character.

69. All agreements between trustees and teachers to be valid and binding shall be in writing and signed by the teacher and chairman of the board of trustees employing him, and sealed with the corporate seal, if any, of the trustees.

(a.) Any teacher whose agreement has expired with the board of trustees, or who is dismissed by them, shall be entitled to receive forthwith all moneys due to him for his services as teacher while employed by the said board ; if such payment be not made by the trustees or tendered to the said teacher by them he shall be entitled to recover from the said trustees the full amount of his salary due and unpaid with ten per cent interest per annum until payment is made, by a suit in a court of competent jurisdiction, and upon his obtaining judgment therein, his case shall be a first lien upon all payments due the said trustees from any source whatsoever until the said claim is satisfied.

## INSPECTORS.

70. The Board of Education shall have power to appoint inspectors who shall hold office during the pleasure of the board ; to define their duties and to provide for their remuneration ; and such inspectors shall visit the schools and report thereon at least twice a year.

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## VISITORS.

71. The visitor in each school district may be—

- (.) The resident Roman Catholic priest ;
- (b.) The members of the Provincial Legislature ;
- (c.) The judges of the Court of Queen's Bench and County Court ;
- (d.) The members of the Department of Education ; and
- (e.) The trustees of each school district in their own district.

72. In incorporated cities or towns, a general meeting of the visitors may be held at any time or place appointed by any two visitors, on sufficient notice being given to the other visitors, and the visitors thus assembled may devise such means as they may deem expedient for the efficient visitation of the schools, and in concert with the school authorities for promoting the establishment of libraries and the diffusion of knowledge.

## SCHOOL ATTENDANCE.

73. The teacher of each school receiving public aid shall within ten days after the close of each semi-annual school term, transmit to his superintendent a correct statement of the names of the children attending such school, with their respective ages, and distinguishing between the sexes, together with the average attendance during the preceding school term, and a statement of the number of months during which the school has been kept open, with such additional information as the superintendent may from time to time require.

(a.) If any trustee or officer of a public school knowingly signs a false report, or if a public school keeps a false school register or makes a false return, that may thereby show a claim of such school to a larger sum than the just proportion of school moneys coming to the same, such school trustee, officer or teacher shall, for every offence, forfeit to the public fund of the municipality the sum of twenty dollars, for which any person whatever may prosecute him before a justice of the peace, and he may be convicted upon the oath of one credible witness other than the prosecutor.

## ANNUAL CENSUS OF CHILDREN.

74. The school trustees in each school district shall between the first and thirtieth of November in each year cause to be made by their secretary-treasurer a census of the children in such school district from the age of five years inclusive to the age of fifteen years inclusive, giving the age in each case, and mentioning those who attend the school, and such census after being certified by the secretary-treasurer of the school district under oath signed by at least one of the trustees, shall, on or before the tenth of the month of December following, be presented to the superintendent, whose duty it shall be to forward the same to the Provincial Secretary within the eight days following, and no census shall be received by the superintendent after the said date of the 10th day of December in each year.

## APPORTIONMENT OF PUBLIC MONEYS.

75. The sum appropriated by the legislature for school purposes shall be divided between the public and separate schools in the manner hereinafter provided in proportion to the number of children between the ages of five and fifteen inclusive, residing in the various public and separate school districts in the province where schools are in operation, as shown in the census returns.

76. The Provincial Treasurer and one other member of the Executive Council, to be appointed by the Lieutenant Governor, shall form a committee for the apportionment of education funds and legislative grant between the public and separate schools ; and the selection of a member of the Executive Council to act as a member of such committee, shall, when practicable, be so made, or from time to time changed by the Lieutenant Governor as to secure that one member of the said committee may be of the Catholic persuasion and one a non-Catholic.

77. It shall be the duty of such committee on or before the fifteenth day of January in each year to apportion the education fund, and within two weeks after the prorogation of the session of the legislature at which the grant for education is voted, to apportion said grant between the schools, according to the aggregate number of children being respectively non-Catholic and Catholic between the ages of five inclusive and fifteen inclusive, who shall be found from the census hereinbefore described to be residing within all the school districts existing in the province.

78. If the census returns upon which such apportionment is at any time to be made, or any of them, be defective in any respect, the said committee shall have power to require school trustees to supply to the committee such information as will enable them to correct the same.

79. After such apportionment shall have been made the sum due to the separate schools shall be placed to the credit of the board in accounts to be opened in the books of the Treasury Department and in the Audit Office.

#### EXPENDITURE OF SCHOOL MONEYS.

80. (a.) From the sum so appropriated to the Board of Education there shall be paid such sums as may be provided by the Lieutenant-Governor in Council for incidental expenses and salaries of superintendent.

(b.) Then the sum of \$75.00 shall be paid semi-annually to each school which has been in operation during the whole of the previous term, and a proportionate part thereof to each school in operation for a part of the same; and in the case of newly established schools, to those which have been in operation for at least one month of said term; provided that except in the case of new school districts no school shall be entitled to receive a larger amount than one-half the sum incurred by the trustees thereof for its current expenses during the term for which such grant is made; provided further that a reduction in the amount to be made may, in the discretion of the board, be made in the case of any school district in which the average attendance of the resident pupils enrolled for the term has been less than forty per cent of such enrolled number.

(c.) The residue remaining after all payments have been made as above provided shall be divided among all the school districts on the basis of average attendance of pupils at the schools of such districts. Provided that in reckoning such average attendance fifty per cent shall be added to the average attendance in rural school districts (being school districts outside the cities, towns and villages).

(d.) No school shall be entitled to receive any portion of the legislative grant whose trustees have neglected to transmit within the time provided by law in the preceding year the census returns which form the basis of the apportionment of the public funds, or whose annual or semi-annual returns are not transmitted as required by the regulations of the board, or whose school has not been kept in operation at least six months during the school year, unless with the sanction of the board.

(e.) No school district shall be entitled to receive any money from the legislative grant or the municipal levy in any year that does not contain at least ten resident children of school age, but the trustees of such may levy and collect from their school district the amount of any indebtedness that may fall due within the same during such year.

81. All payments to school districts shall be made to the order of the duly qualified teacher or teachers of the school, unless it be shown that the salary of such teacher or teachers has been paid in full.

(a.) All payments made by the Provincial Treasurer for the purposes of education shall be made direct to the person or persons entitled to receive the money. Provided no payment shall be made except upon the requisition of the superintendent of education.

82. Any school not conducted according to all the provisions of this or any Act in force for the time relating to separate schools or the regulations of the Board of Education in force under its authority, shall not be deemed a separate school within the

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meaning of the law, and such schools shall neither participate in the educational fund nor in the legislative grant.

### ARBITRATION.

83. In case of any difference between school trustees and teachers in regard to his salary or the sum due him or claimed to be due, or any other matter connected with his duty, the same shall be submitted to arbitration, in which case each party shall choose an arbitrator.

84. In case either party in the first instance neglects or refuses to appoint an arbitrator on his behalf, the party requiring the arbitration, may, by notice in writing to be served upon the party so neglecting or refusing, require the last named within three days exclusive of the day of service of such notice, to appoint an arbitrator on his behalf, and such notice shall name the arbitrator of the party requiring the arbitration; and in case the party served with such notice does not, within the three days mentioned therein, name and appoint an arbitrator, then the party requiring the arbitration may appoint the second arbitrator.

85. The superintendent or a member of the Board of Education, to be nominated by such superintendent, shall be the third arbitrator.

86. The arbitrators may require the attendance of any or all the parties interested in the reference, and of their witnesses, and may direct them or any of them to produce all documents, books, papers, or writings bearing on the matter in question; and the arbitrators may take evidence on oath.

87. The said arbitrators or any two of them may issue their warrant to any person named therein to enforce the collection of any moneys by them awarded to be paid, and the person named in such warrant shall have the power and authority to enforce the collection of the monies mentioned in the said warrant with all reasonable costs by seizure and sale of the property of the party or corporation against whom the same has issued, as any bailiff of the county court has in enforcing a judgment and execution issued out of such court.

88. In case of any dispute or difference arising between any two boards of school trustees in regard to any sum of money due or claimed to be due under any Act of the province of Manitoba, the same shall be referred to arbitration in the manner by this Act provided; and, provided always, that in differences between any two boards of school trustees, the third arbitrator shall be chosen by the other two, and the decision of such three arbitrators shall be final.

### MUNICIPAL OFFICERS.

89. It shall be the duty of the city or town clerk, or clerks of municipalities to furnish to the board of school trustees five days before the annual school meeting authorized to be held under this Act, a certified copy of the last revised municipal voters' list for each ward in the city, town or municipality in which such act is in force.

### HOLIDAYS.

90. Every Saturday and every statutory holiday shall be a holiday in the public schools; subject, however, to regulations respecting holidays as the Board of Education may from time to time make for the schools.

### BY-LAWS FOR COMPULSORY ATTENDANCE OF CHILDREN.

91. Every board of school trustees may, with the sanction of the board make, amend or revoke any by-laws for their school district, for any of the following purposes:

(a.) Requiring the parents or guardians of Roman Catholic children of not less than seven years nor more than twelve years of age, as may be fixed by the law, to send such children to school for a certain period in each year, unless sufficient evidence be

produced by such parents or guardians, that they cannot do so ; and any of the following shall be considered a reasonable excuse ;

(1.) That the child is under instruction in some other manner satisfactory to the magistrate before whom the complaint may be brought ;

(2.) That the child has been prevented from attending school from sickness or any unavoidable cause ;

(3.) That such child has reached a standard of education of the same or greater degree than that to be obtained in such public school by children of twelve years of age ;

(b.) Determining the time during which such children are to attend school ;

(c.) Imposing penalties upon parents or guardians for the breach of any by-law ;

(1.) Admonition in the form of a note of warning, signed by the chairman of the board of school trustees ;

(2.) Summons to appear before the board of school trustees and to receive reprimand from the chairman, if merited ;

(3.) Complaints by the board of school trustees to any justice of the peace of the district, who may impose a fine not exceeding twenty-five cents for the first offence, fifty cents for the second, and so on, doubling the last fine for any repetition of the offence.

92. It shall be competent for any judge of the county or stipendiary magistrate to investigate and decide upon any complaints made by the trustees or any person authorized by them against any parent or guardian for the violation of any such by-law as by the previous section provided, may be enacted ; and it shall be the duty of such judge of the county court to ascertain, as far as may be the circumstances of any party complained of, for not sending his or their child to school or otherwise educating him or them, and whether the alleged violation has been caused by poverty or ill-health, and in any such case the judge shall not award punishment but shall report the circumstances to the trustees making the complaint.

#### REGISTRATION OF SCHOOL TAXES.

93. Previous to the first day of August in each year the boards of school trustees, if they themselves collect the school taxes, shall cause to be made a list of the names of all persons in their district in arrears for school taxes, the amount due by them, the lot or lots on which such taxes are due ; and if such taxes remain unpaid it shall be the duty of the said board of school trustees on or previous to the last day of August in each year, to register the said lots with the amount due on real estate only, with the treasurer of the municipality in which such lots are situated, and if such lots are not within a municipality then in the registry office of the county in which such lands are situated, by filing a copy of the tax list, after which such taxes shall become a first lien or mortgage on the lot or lots on which they are respectively due and payable, and any sale of property or transfer made thereafter shall be subject to such taxes.

94. In incorporated cities and towns the board of school trustees shall each have power to borrow money for the purchase of school lands or the erection of school buildings or other school purposes in the manner hereinafter provided.

#### BORROWING MONEY.

95. If the ratepayers of any school district at a public meeting duly called, require the trustees to borrow any sum of money for the purchase of school sites or erecting of school-houses and their appendages, or for the purchase or erection of a teacher's residence, or for the purpose of paying off any debt, charge or lien against such school-house, or residence, or against the trustees of any school district incurred by them as such trustees for any of the purposes aforesaid, the said trustees shall forward to the Lieutenant Governor in Council, a certified copy of the minutes of such meeting, and the Lieutenant Governor in Council may thereupon sanction such loans, and such sanction shall bind the ratepayers of the said school district to cause to be levied a sum sufficient for the payment of the principal and interest on any such loan at the times when the same shall become payable, as provided between trustees and the lender.

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(a.) No loan under two thousand dollars shall be made for any term exceeding ten years nor for any amount for a period exceeding twenty years.

(b.) The principal on such loan shall be made payable by annual instalments unless with the sanction of the Lieutenant Governor in Council and the said annual instalments together with interest on the principal of such loan may be applied towards the immediate redeeming of the debt contracted by the issue of such debentures, and all school boards that have issued debentures not payable in instalments shall invest in a sinking fund annually, a sufficient sum to meet such debentures when due, and such investment shall be made with the consent and advice of the superintendent, and when so made shall not be payable to the order of the trustees without such order being countersigned by said superintendent until their debentures mature.

(c.) Notice of such meeting shall be given by posting up on the door of the school-house (if any) and in two or more conspicuous places within the school district for which such loan is sought to be obtained, at least two weeks previous to such meeting, a notice in the form or to the effect of that set forth in said schedule A of this Act.

(d.) A majority of the Roman Catholic ratepayers of any such schools present at such meeting shall be sufficient to authorize such loans, and the assent of the Lieutenant Governor shall be obtained before such loan is completed.

(e.) The assent of the Lieutenant Governor to any such loan shall be conclusive evidence of all the necessary formalities having been complied with, and that such loan is one which such school district may lawfully make.

(f.) Any school district having obtained the assent of the Lieutenant Governor to a loan, may issue debentures therefor in the form set forth in schedule B of this Act, to secure the amount of the principal and interest upon such loan, upon such terms as such loan can be obtained, and the said debentures shall be sufficient, when signed by the secretary-treasurer and countersigned by one or more trustees, to bind the said trustees and to create a charge or lien against all revenues of the school district for which such loan is made.

(g.) All debentures issued or to be issued under the authority of this Act and the coupons attached thereto shall create and be a charge and lien upon all school property then or thereafter acquired by, or granted, or given to the school district which shall issue the said debentures as well as upon all of the Roman Catholic property assessable in such school district for school purposes for the said district, and the amounts from time to time falling due upon such debentures and coupons (subject to any provisions for establishment of sinking funds for the repayment of any such debentures) shall be included in the amount required from time to time for school purposes for the said district, and shall be collected and received by and paid to the trustees of the said school district in the manner directed for the raising of money for school purposes.

(h.) Any writ of execution against the trustees for any school district which school lies wholly within one municipality, may be endorsed with a direction to the sheriff to levy the amount thereof by rate, and the proceedings thereon shall be the following:—

(1.) The sheriff shall deliver a copy of the writ and endorsement to the treasurer of the municipality in which such school district is situate, or leave such copy at the office or dwelling-house of such officer with a statement in writing of the sheriff's fees and of the amount required to satisfy such execution, including in such amount the interest calculated to some day as near as is convenient to the day of service.

(2.) In case this amount with interest thereon from the day mentioned in the statement is not paid to the sheriff within one month after the service, the sheriff shall examine the assessment roll of the municipality in which such school district is situate, and shall in like manner as rates are struck for general municipal purposes strike a rate on the assessable lands in said school district sufficient on the dollar to cover the amount due on the execution with such addition to the same as the sheriff deems sufficient to cover the interest and his own fees up to the time when such rate will probably be available.

(3.) He shall thereupon issue a precept or precepts under his hand and seal of office directed to the said treasurer, and shall annex to every such precept the roll of such rate, and shall by such precept after reciting the writ, and that the said trustees

had neglected to satisfy the same, and referring to the roll annexed to the precept, command the said treasurer to levy or cause to be levied such rate at the time and in the manner by law required in respect of the general municipal rates.

(4.) At the time for levying the annual rates next after the receipt of such precept the said treasurer shall add a column to the tax roll of the lands in said school district headed "Execution rate of A. B. vs. The School Trustees for the Separate School District of \_\_\_\_\_ in the Province of Manitoba" (or, as the case may be, adding a column for each execution, if more than one) and shall insert thereon the amount by such precept required to be levied upon each person respectively, and shall levy the amount of such execution rate as aforesaid, and said treasurer, so soon as the amount of such execution or executions is collected, shall return to the sheriff the precept with the amount levied thereon.

(5.) The sheriff shall, after satisfying the executions and all fees thereon, return any surplus within ten days after receiving the same to the said treasurer for the general purposes of the said school trustees.

(6.) The treasurer shall for all purposes connected with carrying into effect or permitting or assisting the sheriff to carry into effect the provisions of this Act with respect to such execution, be deemed to be an officer of the court out of which the writ issued, and as such shall be amenable to the court and may be proceeded against by attachment, mandamus or otherwise, in order to compel him to perform the duties hereby imposed upon him.

(7.) The above clauses, one to six both inclusive, shall be applicable to executions against the school trustees for any district lying within more than one municipality, but in such case the said sheriff shall strike a rate on the assessable lands in said school district from the assessment rolls of the several municipalities in which said school is situate, and shall deliver to the treasurer of each of the municipalities the precept or precepts aforesaid, attaching a roll of said rate so far as it applies to the lands of said school district in the municipality of each of such treasurers.

### SCHEDULE "A."

#### PUBLIC NOTICE.

Notice is hereby given that a meeting of the Roman Catholic ratepayers within the separate school district of \_\_\_\_\_ number \_\_\_\_\_ will be held at the \_\_\_\_\_ in the said district on \_\_\_\_\_ day the \_\_\_\_\_ day of \_\_\_\_\_ A.D. 18 \_\_\_\_\_ at the hour of \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, for the purpose of considering the expediency of raising money by way of loan to (here, state the purpose for which the loan is intended).

Dated this \_\_\_\_\_ day of \_\_\_\_\_ A.D. 18 \_\_\_\_\_

*Secretary-Treasurer.*

### SCHEDULE "B."

Debentures of the separate school trustees for the \_\_\_\_\_ separate school district of \_\_\_\_\_ number \_\_\_\_\_ in the \_\_\_\_\_ Province of Manitoba. The school trustees for the separate school district of \_\_\_\_\_ number \_\_\_\_\_ in the province of Manitoba, promise to pay to bearer at the \_\_\_\_\_ at \_\_\_\_\_ the sum of \_\_\_\_\_ dollars of lawful money of Canada, \_\_\_\_\_ years from the date hereof, and to pay interest thereon during the currency hereof at the same place at the rate of \_\_\_\_\_ per centum per annum, to the bearer of the coupons hereunto annexed respectively, and numbered with the number of this debenture.

Issued at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_, by and under the authority of subsection f of section 95 of an Act of the Legislature of Manitoba, passed in the \_\_\_\_\_ year of Her Majesty's reign, chapter \_\_\_\_\_

S. H.

*Trustee.*

T. R.

*Secretary-Treasurer.*



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## Coupon No.

The school trustees of the separate school district of \_\_\_\_\_ number \_\_\_\_\_ in the province of Manitoba, will pay the bearer hereof at the \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_, the sum of \_\_\_\_\_ dollars, being interest due on that day on school debentures, &c.

T. R.

*Secretary-Treasurer.*

The minutes of any section of the ratepayers of a school district called to consider the propriety of borrowing money as above mentioned shall be headed with a statement in the following form or to the same effect :—

“ Minutes of a public meeting of the Roman Catholic ratepayers of the separate school district of \_\_\_\_\_ number \_\_\_\_\_ in the province of Manitoba, held the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_ in pursuance of a notice given as required by ‘The Separate School Act,’ and called for the purpose of considering (and advising the trustees of said school section in respect to) the question of raising or borrowing a sum of money for the purpose of (here state the purpose for which the loan is intended as is the public or posted notice).

“ The said meeting having been organized by Mr. A. B. as chairman, and Mr. C. B. as secretary, the following proceedings were had :

“ It was moved by Mr. \_\_\_\_\_ &c. (the motions and formal proceedings of the meetings to be then given, certified at the foot thereof to be correct, and signed by the chairman and secretary).”

The said minutes shall also contain a list of the names of the ratepayers who voted at the said meeting upon the question of raising or borrowing money, distinguishing those who are freeholders from those who are not, and recording the vote given by each person “for or against the said question.”

96. A copy of said minutes shall be given to the secretary-treasurer of the board of trustees of the district for the information of the said board and the original with a declaration endorsed thereon and attached thereto, taken before a justice of the peace or other person authorized to take declarations under the statute, with a copy of the notice calling such meeting, proving the posting of the said notice as required by the Act, shall be given or transmitted to the superintendent; and it shall be the duty of such superintendent, with as little delay as possible after the receipt of such minutes and proof, to inquire and satisfy himself that the purpose for which the loan is required is a proper and necessary one, and having regard to the means of the ratepayers of such school district to repay the same; and if such superintendent approves of such loan he shall transmit said minutes, proof, and other documents connected thereof to the provincial secretary together with a certificate or note of his approval endorsed thereon over his signature.

97. It shall be the duty of the secretary-treasurer of the board of school trustees of any school district, upon being made aware that a loan as aforesaid had been sanctioned by the ratepayers to at once transmit to the superintendent a statement duly certified under the hand of the said secretary-treasurer and the seal of the said board of trustees, to be correct, showing the amount of the assessed value of the real and personal estate of such school district, its debentures indebtedness including the amount proposed to be added under such by-law then being submitted for approval; its indebtedness other than under said debentures; the yearly rate in the dollar required to pay said debenture debt; the total rate required for all purposes and the interest past due, if any, on the indebtedness of said school district.

98. A statement embodying the information mentioned in the last preceding section as to the assets and liabilities of the school section, shall be written or printed on the back of each debenture, issued under the authority of this Act, and following such statement shall also be written or printed the words “Issued under the provisions of the Separate School Act,” viz. : \_\_\_\_\_ Vic., Cap \_\_\_\_\_

99. Upon the assent of the Lieutenant Governor being obtained to such loan and upon presentation within six months thereafter to the Provincial Secretary or Acting

Provincial Secretary of the debenture or debentures issued to raise the same the said Provincial Secretary or Acting Provincial Secretary (unless such assent has in the mean time been withdrawn) shall sign such debenture or debentures under the statement or endorsement thereon hereinbefore mentioned, and shall affix the seal of his office, or of the province thereto, and such signature and seal shall be conclusive that all the formalities in respect to said loan and the issue of said debentures have been complied with, and that the correctness of the statement or endorsement thereon, and the legality of the issue of such debenture shall be thereby conclusively established, and its validity shall not be questionable by any court in this province, but the same shall to the extent of the assets of the school district issuing the same, be a good and indefeasible security in the hands of any *bona fide* holder thereof.

100. The Governor General in Council, when the question of any school loan shall be before him for assent thereto, may take into consideration the effect of the proposed loan upon the security of any previous loan, in case the new proposed loan shall be repayable before a former one, or former ones, and may withhold such assent to such new loan if he considers that the security of the holder of any existing debenture loan of such school district was likely to be rendered insufficient by the reason of the date of payment of the proposed new loan being prior to that of any then existing debenture debt of such district.

101. The trustees of any school district may under the advice and with the consent of the superintendent, invest any money under the control of such trustee as a sinking fund for the payment of any loan, or otherwise held for school purposes and not required for expenditure within twelve months.

102. The trustee of any school district may with the consent and approval of the superintendent sell and dispose of any land or real estate, or any interest therein for the benefit and advantage of said school district and convey the same or any portion thereof in fee simple or for any less estate to any purchaser or purchasers thereof, or of any interest of freehold, leasehold, or other estate therein, by deed or other instrument as the case may be signed by the chairman and secretary-treasurer of such school district.

103. None of the provisions of this Act shall affect any suit pending in any of the courts at the date of the passing of the same.

104. In the case of any rural school district the trustees of which neglect or refuse to levy or ask the council to levy a special rate to meet their debentures indebtedness maturing within the school year, and in the case of any rural school district in which there is not a legally competent school board, the superintendent shall be empowered to act for such school board or school district in requiring the council or councils concerned to levy or collect the sums he shall designate as necessary to meet such indebtedness, and the council or councils shall levy and collect such sum and pay the same over to the creditors upon the order of the said superintendent. And it is further provided that upon the trustees of any rural school district becoming legally incompetent or unable to act from any cause and there being a sufficient number of ratepayers resident in the district to form a new school board, the superintendent shall thereupon be invested with the powers of the school trustees for such district, and shall be empowered to collect and receive all moneys due the said trustees from any source, to take possession of all their school properties, secure a proper title for all properties they may be entitled to, and in his discretion to dispose of or sell the same; provided that all moneys received by the superintendent in any way in behalf of such district shall be paid over by him to meet the liabilities of the same that may become due from time to time.

#### LOANS.

105. At any time in any one year before the estimate of a school district has been prepared by a board of school trustees or handed to the clerk of the municipality, or before the moneys have been paid over to the board by the municipality, a board of school trustees in any city, town or local municipality, may borrow money upon the credit of the board and give the promissory note or notes of the board for the same, or for the moneys theretofore borrowed to such an amount as is legally authorized;

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provided, however, that no such money shall be borrowed or notes given to an amount exceeding in the aggregate one-half of the amount of the said estimate for the next preceding year, if such estimate has not been made for the current year; and provided also that such moneys shall only be borrowed or notes given upon a by-law of the board, which recite the amounts previously borrowed and the notes previously given therefor and any sum paid thereon, but any error or omission in reciting such sums or notes shall not invalidate such by-law as against a *bona fide* lender or payee or holder for value of any such note having notice of such error or omission.

“(a.) Any such note or debt for money so borrowed may be enforced against the board of school trustees, and the ratepayers liable to contribute to its revenues in the same manner as claims against or debts of municipalities, may be enforced under the Municipal Act.”

“(b.) Upon the payment to the board by a municipality of any portion of the sums to be levied for the trustees by a municipality it shall be the duty of the board of school trustees to apply one-half of such sum so paid to it for the reduction of the debt incurred for moneys so borrowed, or upon such note or notes, or in the event of no such debt or note or not sufficient thereof to exhaust the one-half of the sum so paid being then overdue, then to deposit such half, or the unexhausted portion thereof in some chartered bank and to apply the same to such debt or notes as may become due and payable.”

(c.) All payments authorized by loan which are in the discretion of the Board of Education, shall be subject to ratification by the Lieutenant Governor in Council.

### EXPROPRIATION.

106. It shall be the duty of the trustees of every school district to purchase or lease, and take with the consent, in writing, of the Board of Education in that behalf, the necessary land or real property for school-houses, teachers' residences and other buildings in connection therewith, and if necessary for the purpose aforesaid, to increase the extent of the school grounds, already in possession, by purchasing or leasing and taking lands adjoining the same.

(1.) No land or property may be taken for the purpose aforesaid without the consent of the owner, if, at the time of the application of the trustees for the same:

(a.) The said land or property is owned by any religious, charitable or educational corporation;

(b.) The land or property required for a separate school is owned by a non-Catholic;

(c.) In a rural school district the land required is less than three hundred yards from the owner's residence or buildings or exceeds one acre in extent;

(d.) In a city or town the lot required is not vacant;

(2.) For the purposes aforesaid the school trustees shall first serve the owners of the land or parties empowered to convey the land required as aforesaid with a notice which shall contain:

(a.) A description of the land to be taken:

(b.) A declaration of readiness to pay some certain sum or rent, as the case may be, for such land:

(c.) The name of a person to be appointed as the arbitrator of the school trustees if their offer be not accepted, and

(d.) Such notice shall be accompanied by the affidavit of one or more of the school trustees, setting forth that he knows the land, that the said land is required for school purposes, and that the sum offered is in his opinion a fair compensation.

(3.) If within ten days after service of the said notice the person owning the said land signifies in writing his readiness to accept the said sum for rent, then the school trustees shall cause the proper agreements and contracts to be made and entered into, and the price of compensation to be paid.

(4.) If within the time aforesaid, the owner or holder of the land does not signify his readiness to accept the said sum, but gives notice in writing, of the name of his arbitrator, then the two arbitrators shall jointly appoint the third, and if they cannot agree upon a third, the judge of the county court having jurisdiction in the division, in which the land is situate, shall appoint upon application such a third arbitrator.

(5.) If within the time aforesaid the said owner or holder of the land does not notify the trustees of his acceptance of the sum offered nor of the name of a person whom he appoints as arbitrator, then the judge of the county court shall, upon application appoint one in his stead, and the third arbitrator shall be appointed as aforesaid.

(6.) Where the person owning or holding the said lands or his agent or representative is unknown, or cannot be found with due diligence, or is incapable of receiving tender, then upon proof thereof to the county court judge, the said judge may dispense with such tender and notice; and in such case notice of submission to arbitration shall be published in a newspaper in or near the district in which the land lies, and subsequent proceedings may thereafter be taken as if such tender had been personally made and notice given.

(7.) The said arbitrators duly appointed, or a majority of them, shall value the land and make an award in writing and fix the amount of the costs of the arbitration not to exceed \$3 per day for each arbitrator, and 10 cents per mile each way for travelling expenses, and they shall further direct which of the parties should pay the said costs, and if a portion, in what proportion.

(8.) An appeal to the judge of the county court shall lie upon application filed and served within ten days of the award for the revision of the costs taxed.

(9.) The compensation money agreed upon by the trustees or awarded by the arbitrators for any such land or property shall stand instead of such land or property, and any claim thereto or encumbrance, upon said lands or property shall be converted into a claim for such compensation money, or to a proportionate amount thereof, and shall be void as respects the land or property which shall by the fact of the making of said tender or award and of the payment of the money, become and be absolutely invested in the trustees for the purposes of this Act.

(10.) If the person owning such land is incapable of conveying the same, or the person to whom the compensation money is payable is incapable of executing or refuses to execute a proper conveyance and transfer of the said lands to said trustees or cannot be found, or is unknown or has no agent or representative, or the trustees have reason to fear any claim or encumbrance, they shall pay the compensation money agreed upon or the money awarded into the office of the clerk or prothonotary of the Court of Queen's Bench with interest thereon for six months at the rate of six per cent per annum, and deliver to the clerk or prothonotary of the court, a copy of the conveyance or agreement or award, or a certified copy of the agreement or award.

(11.) Notice in such form and for such time as the court appoints shall be forthwith inserted by the prothonotary in a newspaper in or near the district in which the lands are situate and shall state the facts under which such money is paid, and call upon all persons entitled thereto, or claiming the same or any part thereof, to file their claims, and such claims shall be received and adjudged upon by the court and such proceedings shall forever bar all claims to the compensation money or any part thereof, and the court shall make such order for the proper distribution or payment of said monies and for costs incidental to the application as may be proper.

107. No person suffering from any contagious or infectious disease, or who resides in a house in which any such disease exists shall be entitled to attend or enter any separate school during the existence of any such disease as aforesaid nor at any time thereafter, until he presents to the trustees of the school he wishes to attend a certificate of a physician that there is no longer danger of contagion or infection from his attendance to the other pupils of the school, provided that in rural school districts the trustees may, in the absence of a physician admit applicants for admission, without such certificate, if they are satisfied that there is no danger of contagion or infection from their doing so. And any parent or guardian of any child who knowingly sends such child to any public school in contravention of these provisions shall be liable, upon conviction before a justice of the peace, upon the complaint of the trustees or of any ratepayer of the school to a fine not exceeding ten dollars for each offence or imprisonment in the common jail for a period not exceeding thirty days.

#### FINES AND PENALTIES.

108. Any trustees or secretary-treasurer neglecting or refusing to discharge any duty assigned to him or them by this Act, shall be liable to a penalty of ten dollars for

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each offence, and the said penalties may be recovered within three months of the time when such offence was committed.

109. Whenever any school trustee or secretary-treasurer, after his dismissal, resignation or ceasing to hold office, detains any money, book, paper or property belonging to the school trustees of any school, he shall thereby incur a penalty of not less than five dollars nor more than twenty dollars for each day during which he shall retain possession of any such money, book, paper or property, after having received a notice from the superintendent of education requiring him to deposit the same in the hands of some person mentioned in such notice.

110. If any trustee of a school, or other person, knowingly signs a false report, or if any teacher of a common school keeps a false school register, or makes a false return with a view of obtaining a larger sum than the just proportion of school moneys coming to such school, such trustee or teacher shall for each offence forfeit the sum of twenty dollars.

111. Every farmer, head of a family or guardian who refuses to give the trustees of any school district the information required by them to enable them to make up the census of children required by this Act, or who makes a false declaration, shall incur a penalty of not less than five nor more than twenty-five dollars.

112. Any justice of the peace, assessor, constable, or other officer neglecting or refusing to discharge any duty assigned to him by the provisions of this Act shall be liable to a penalty for each offence of a sum not exceeding fifty dollars.

113. If any person wilfully makes a false declaration of his right to vote, he shall be liable to a penalty of not less than fifty nor more than one hundred dollars.

114. The proceedings of every school meeting shall, within eight days thereafter be reported by the chairman of such meeting to the superintendent under a penalty of five dollars.

115. Any person who wilfully disturbs, interrupts, or disquiets the proceedings of any school meeting, or any one who interrupts or disturbs any school by rude or indecent behaviour or by making a noise either within the place where school is kept or held, or so near thereto as to disturb the order or exercises of the school, shall for each offence on conviction thereof before a justice of the peace, forfeit and pay a sum not exceeding twenty dollars, together with the cost of the conviction as the said justice may think fit.

116. Any person chosen as trustee who has not refused to accept office, and who at any time refuses or neglects to perform his duties shall forfeit the sum of twenty dollars.

117. Should the trustees of any school wilfully neglect or refuse to exercise all the corporate powers vested in them by this Act, or any other Act or Acts of this province, or the fulfilment of any contract or agreement made by them, any trustee or trustees so neglecting or refusing to exercise such powers, shall be held to be personally responsible for the fulfilment of such contract or agreement.

118. All such prosecution for fines and penalties may be instituted by any competent person before any justice of the peace who may convict the offender on the oath of one credible witness other than the prosecutor; and if upon conviction the penalty, with costs, is not paid forthwith, the same shall, under warrant of such justice, be levied with costs of distress, sale of goods and chattels of the offender; and such penalties, when so paid and collected, shall, by such justice, be paid over to the school fund of the district to which such delinquent belongs.

119. It shall be the duty of the superintendent in case of the loss of any school money or properties belonging to any school district through default, embezzlement or wilful neglect of any trustee or person connected therewith, to prosecute such trustee or person in his own name as such superintendent for the benefit of the district concerned, and to collect any costs that may be incurred by him in such prosecution from the school district or districts for whose benefit such prosecution was undertaken, by notifying the clerk of the municipality in which each such district is wholly or partly situated, and such clerk shall thereupon pay the said costs of the superintendent out of the municipal levy for the said school district, before paying any portion of the same to the trustees, provided that all such prosecutions shall be undertaken only when authorized by a resolution of the Board of Education.

## NORMAL SCHOOLS.

120. The Board of Education is hereby empowered :

(a.) To establish in connection with any separate schools which may be established at St. Boniface, normal school departments, with a view to the instruction and training of teachers of public schools in the science of education and the art of teaching, and to establish and provide for the conducting of teachers' institutes at any other schools within the jurisdiction of the board ;

(b.) To make, from time to time, rules and regulations necessary for the management and government of the said departments ;

(c.) To arrange with the trustees of such public schools all things which may be expedient to promote the objects and interests of the said normal school departments ;

(d.) To prescribe the terms and conditions on which students and pupils will be respectively received and instructed in the said departments ;

(e.) To determine the number and compensation of teachers, and of all others who may be employed in the said departments ;

(f.) To select a suitable person as principal of the normal school under its management ; and the salary of the said principal shall be fixed by the Lieutenant Governor in Council and paid from the legislative grant.

121. The Lieutenant Governor in Council may direct that a sum not exceeding one-tenth of the amount of the grant for educational purposes be allowed for the maintenance of normal school departments as hereby established.

122. All moneys which on the 30th day of April, 1890, were held by the Government of the province of Manitoba for the use and benefit of the Roman Catholic section of the then Board of Education shall be by the said government held for the use and benefit of the Board of Education to be established under the provisions of this Act ; shall be applied and paid out for the same purposes and under the same conditions as are provided by this Act in respect of other moneys which may be held by the said government for the use and benefit of separate schools.

123. In case of the establishment of any school district under the provisions of this Act with boundaries substantially similar to those of any Roman Catholic school district which was in existence on the 30th day of April, 1890 ; and in case the property or assets of the Catholic school district have been transferred to or taken by any board of school trustees which has been in existence under or by virtue of the Acts relating to education and public schools since the 1st day of May, 1890, then and in every such case the property and assets shall be transferred and delivered up to the new board of trustees established under the provisions of this Act.

## EXHIBIT Q.

## REPORT ON FRENCH SCHOOLS.

(A. L. YOUNG.)

I have the honour to submit the following report on the French schools of the province of Manitoba, for the year 1894.

From the records of the Catholic section of the old school board it appears that there were some ninety-one school districts under their control previous to the time when the present School Act came into force. A number of these districts, however, had been organized where the Catholic population was insufficient to support them, consequently several of them had never been put in operation, while others were maintained for a short time only.

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The total number of districts disbanded for various reasons is twenty-four. In the majority of these cases the Catholic children attend the public schools where it is possible for them to do so.

Twenty-seven of these old districts, together with nine newly formed ones, have accepted the public school system ; making a total of thirty-six school districts now under government control.

Of the newly formed districts several are in mixed settlements, the French and English being about equally divided. In such cases I find that even when the Catholics have full control of the district they generally put in one English trustee. In one case the only Protestant in the district was unanimously elected a member of the school board.

Convent schools supported by voluntary subscriptions, fees, &c., are in operation at the following places:—Winnipeg, St. Boniface, St. Norbert, St. Jean Baptiste, ~~St. Anne, St. Pierre Joly, St. François Xavier and Brandon.~~ In addition to these there are some thirty-eight schools throughout the province still conducted as separate schools and supported by voluntary subscriptions. The salaries paid in all such cases are very low.

In visiting the different French settlements throughout the province I find a growing interest in regard to educational matters.

I visited the Dauphin country for the first time in November last. Here I found a large number of half-breeds and French Canadians settled along the Turtle River. All were extremely anxious to have a school started, and eagerly signed a petition asking for the formation of a district at this point. Another petition was sent in at the same time by the French settlers in the vicinity of Elliott's stopping place on the Dauphin Road.

Owing to the lateness of the season I was unable to visit the French settlement on the Mossy River between Lakes Dauphin and Winnipegosis.

I also visited the French settlements along Lake Manitoba for the first time last fall. The Catholic Mission at St. Laurent is very thickly settled with half-breeds and a few French Canadians. The trustees take considerable interest in regard to school matters, and have engaged Alex. DeLaronde, B.A., who is at present attending the Normal School in Winnipeg, to take charge of the two schools which are located at this point. There are about sixty pupils enrolled in each one of these schools.

The French settlers in the vicinity of Oak Lake are now fairly well supplied with schools. Several new districts have been formed since my first visit in 1893.

The old Decorby school district at Fort Ellice was reorganized last fall, but owing to their territory having been encroached upon during the past five years, they are now limited to eleven sections of very poor land. The probabilities are that they will have a hard struggle to maintain a school at this place.

On my return from Fort Ellice I drove through the Hungarian settlement in Huns Valley. The school here had been closed for some time. Material is now being taken out and preparations are being made to build as soon as possible. I am in hopes that the new school will be opened early next spring.

The majority of the districts in the eastern part of the province require to be reorganized, as many of them appear to have no definite boundaries which are recognized by the municipalities.

With the exception of a very good supply of maps, the equipment of these schools leaves very much to be desired. The blackboard space is very limited and would be considered practically useless by any teacher who had taken a course of normal training.

A great drawback to some of the schools especially in the poorer districts is the lack of school books ; this difficulty is overcome in some cases by the trustees using the school funds for the purchase of books required, and supplying them to the children free of charge.

As a rule the teachers have the ability and energy to do good work, but they lack the normal school training. The different subjects are taken up and taught in the same manner that was done in the province of Québec twenty years ago.

Very good work along a certain line is done in some subjects. For instance I have in my possession quite a number of letters received from French teachers, some of them—

written in English, which will compare favourably with correspondence received from English teachers.

I have seen a number of written engagements with teachers of schools which are in receipt of the Government grant, and in all cases it was agreed that no religious instruction should be given until four o'clock. As the school hours under the old system were from 9 to 11.30 o'clock a.m., and from 1 to 3.30 p.m., it is considered somewhat of a hardship by these teachers to put in an extra one and a half hours' work.

The constant agitation which has been kept up during the past five years has certainly had the effect of creating an increased interest in regard to educational matters; and I am satisfied that when the school question is finally settled this increased interest will have a very beneficial effect on the French schools of the province of Manitoba.

From my intercourse with the French and half-breeds Catholics of the province I have no hesitation in saying that the vast majority of them are prepared to abide by the final decision of the authorities in regard to the school question. They still cling to the hope that the separate school system will be restored to the province, but should this hope not be realized in the near future, it will only be a matter of a short time before the public school system will practically be universally adopted throughout the province.

Name of District.	Date receiving Grant as Public Schools.							
	1891.		1892.		1893.		1894.	
	1st	2nd	1st	2nd	1st	2nd	1st	2nd
St. Jean Baptiste North.....							1	1
Deux Petites Pointes.....							1	1
St. Charles.....								1
St. François Xavier East.....								1
St. Eustache.....								1
Fairbanks.....					1		1	1
St. Leon Village.....	1	1			1	1	1	1
St. Leon East.....					1		1	1
Theobald.....					1		1	1
Decorby.....							1	1
St. Alphonse South.....								1
St. Laurent No. 1.....							1	1
St. Laurent No. 2.....							1	1
St. Boniface West.....			1		1	1	1	1
St. François Xavier West, Martineau.....	1	1	1	1	1	1	1	1
St. Raymond.....		1	1	1	1	1	1	1
St. Vital East.....					1	1	1	1
Glengarry.....				1	1	1	1	1
Fannystelle.....								
Bernier.....		1	1	1	1	1	1	1
Camper.....	1		1	1	1	1	1	1
St. Antoine.....		1		1	1	1	1	1
St. Hyacinthe.....								1
Arsenault.....							1	1
Deleau.....								1
Maffam.....					1	1	1	1
Routledge.....								
St. Urbain.....								
Canadaville.....								
Hamelin.....								
St. Felix.....								
Kinlough.....								
Huns Valley.....							1	1
Total.....	3	5	4	7	10	12	20	26

formed since 1890



# Manitoba School C. se.

List of French schools in the Province of Manitoba, which have accepted the public school system:—

1. St. Jean-Baptiste, North.....	St. Jean Baptiste Post Office.	
2. Deux Petites Pointes.....	Letellier	"
3. St. Charles.....	St. Charles	"
4. St. François Xavier, East.....	St. François Xavier	"
5. St. Eustache.....	St. Eustache	"
6. Fairbanks .....	Baie St. Paul	"
7. St. Leon Village.....	St. Léon	"
8. St. Leon, East.....	Manitou	"
9. Theobald.....	Somerset	"
10. Decorby.....	Fort Ellice	"
11. St. Alphonse, South .....	St. Alphonse	"
12. St. Laurent No. 1.....	St. Laurent	"
13. St. Laurent No. 2.....	"	"
14. St. Boniface, West .....	St. Vital	"
15. Kinlough .....	Starbuck	"
16. Martineau .....	Water Hen River, Indian Reserve.	
17. St. Raymond.....	Giroux Post Office.	
18. St. Vital, East.....	St. Boniface Post Office.	
19. Glengarry .....	Ingleside, Scotch Catholics.	
20. Fannystelle .....	Fannystelle.	
21. Bernier.....	St. Marks.	
22. Camper .....	Minnewakan, Mixed.	
23. St. Antoine .....	Ste. Agathe,	
24. St. Hyacinthe .....	La Salle,	"
25. Arsenault.....	Oak Lake,	"
26. Deleau .....	Deleau,	"
27. Maffam .....	Deleau,	"
28. Routledge .....	Routledge,	"
29. St. Urbain.....	St. Alphonse (school not yet built).	
30. Canadaville .....	Dauphin Road, " " "	
31. Hamelin .....	Ste. Rose du Lac.	
32. St. Felix .....	Deloraine.	
33. St. François Xavier, West.....	St. François Xavier	
34. Huns Valley .....	Huns Valley (school building).	
35. Gascon .....	Clarkleigh.	
36. Courchène.....	Oak Lake (organization not complete)	

## List of French Schools in Manitoba.

No.	Name.	Post Office.	Remarks.
1	Winnipeg.....	Winnipeg.....	Disbanded.
2	St. Boniface, Ville.....	St. Boniface.....	Separate.
3	St. Boniface, South.....	do.....	do
4	St. Vital.....	St. Vital.....	do
5	St. Norbert No. 1.....	St. Norbert.....	do
6	do 2.....	do.....	do
7	do 3.....	do.....	do
8	do 4.....	do.....	Convent.
9	St. Agathe.....	St. Agathe.....	Separate.
10	Provencher.....	do.....	do
11	St. Jean-Baptiste Centre.....	St. Jean-Baptiste.....	Convent.
12	do North.....	do.....	Public.
13	Deux Petites Pointes.....	Letellier.....	do
14	St. Pie.....	St. Pie.....	Separate.
15	Taché.....	St. Joseph.....	do
16	St. Joseph.....	do.....	do
17	Lorette East.....	Lorette.....	do
18	do West.....	do.....	do
19	do Centre.....	do.....	do
20	Ste. Anne West.....	Ste. Anne.....	do
21	do Centre.....	do.....	Convent.
22	do East.....	do.....	Separate.
23	St. Joachim.....	St. Malo.....	do
24			
25	St. Charles.....	St. Charles.....	Public.
26	St. Francois-Xavier, East.....	St. Francois-Xavier.....	do
27	do Centre.....	do.....	Convent.
28	do West.....	do.....	Public.
29	Baie St. Paul.....	Baie St. Paul.....	Disbanded.
30	St. Eustache.....	St. Eustache.....	Public.
31	Fairbanks.....	Baie St. Paul.....	do
32	St. Pierre, South.....	Jolys.....	Separate.
33	do Centre.....	do.....	do
34	do North.....	do.....	do
35	Iberville.....	do.....	do
36	St. Leon Village.....	St. Leon.....	Public.
37	do East.....	Manitou.....	do
38	Theobald.....	Somerset.....	do
39	Decorby.....	Fort Ellice.....	do
40	Brandon.....	Brandon.....	Convent.
41	Selkirk.....	Selkirk, West.....	Disbanded.
42	St. Alphonse.....	St. Alphonse.....	Separate.
43	do South.....	do.....	Public.
44	Marion.....	Oak Lake.....	Disbanded.
45	St. Daniel.....	Carman.....	do
46	P. La Prairie.....	P. La Prairie.....	do
47	Dufferin.....	Emerson.....	do
48			
49	Youville.....	St. Jean Baptiste.....	Separate.
50	St. Jean Baptiste, East.....	do.....	do
51	St. Laurent.....	St. Laurent.....	Public.
52	La Rivière.....	Deloraine.....	Disbanded
53	Lacombe.....	Cross Lake.....	do
54			
55	Maurepas.....	Fort Alexander.....	do
56	Darveau.....		do
57	Chenail.....		do
58	Brisbois.....	Minnedosa.....	do
59	Lac Plat.....	Shoal Lake.....	do
60	Caledonia.....	Ste. Anne.....	Separate.
61	Huns Valley.....	Huns Valley.....	Public.
62	Campeau.....	St. Alphonse.....	Separate.
63	St. Boniface, West.....	St. Vital.....	Public.
64	Kinlough.....	Starbuck.....	do
65	St. Boniface, North.....	St. Boniface.....	Disbanded.
66	Dupont.....	Lake Winnipegosis.....	do
67	Martineau.....	Water Hen River.....	Public.
68	St. Jean Baptiste du Lac.....	St. Jean Baptiste.....	Separate.
69	Stony Mountain.....	Stony Mountain.....	Disbanded.
70	Ste. Anne.....	Ste. Anne.....	Separate.

# Manitoba School Case.

## LIST of French Schools in Manitoba—Continued.

No.	Name.	Post Office.	Remarks.
71	St. Raymond.....	Giroux.....	Public.
72	St. Vital, East.....	St. Boniface.....	do
73	Ile des Chênes.....	Ile des Chênes.....	Separate.
74	St. Norbert, No. 5.....	St. Norbert.....	do
75	do No. 6.....	do.....	do
76	Riel.....	Grande Pointe.....	do
77	Glangarry.....	Ingleside.....	Public.
78	Ste. Marie.....	St. Alphonse.....	Separate.
79	Fannystelle.....	Fannystelle.....	Public.
80	St. Cuthbert.....	Lorette.....	Separate.
81	Varenes.....	Whitemouth.....	Disbanded.
82	St. Nicholas.....	St. Agathe.....	Separate.
83	Grande Clairière.....	Grande Clairière.....	do
84	Bernier.....	St. Marks.....	Public.
85	Camper.....	Minnewakan.....	do
86	Gascon.....	Clarkleigh.....	do
87	St. Joseph, No. 2.....	St. Joseph.....	Disbanded.
88	Courchene.....	Oak Lake.....	Public.
89	Vachon.....	do.....	Disbanded.
90	St. Antoine.....	St. Agathe.....	Public.
91	La Broquerie.....	La Broquerie.....	Separate.
	St. Agathe, No. 2.....	St. Agathe.....	do
	St. Hyacinthe.....	La Salle.....	Public.
	Notre-Dame de Lourdes.....	Lourdes.....	Separate.
	Arsenault.....	Oak Lake.....	Public.
	Routledge.....	Routledge.....	do
	Deleau.....	Deleau.....	do
	St. Urbain.....	St. Alphonse.....	do
	Maffam.....	Oak Lake.....	do
	Canadaville.....	Glen Smith.....	do
	Hamelin.....	Ste Rose du Lac.....	do

French school districts under Government control.....	35
do disbanded.....	22
Separate schools.....	57
	44
	<u>101</u>



## REMEDIAL ORDER IN COUNCIL.

833

AT THE GOVERNMENT HOUSE AT OTTAWA,

TUESDAY, the 19th day of March, 1895.

*Present :*

HIS EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL.

The Committee of the Privy Council have the honour to report that by the Act passed by the Parliament of Canada in the thirty-third year of Her Majesty's reign, chapter three, intituled :

"An Act to amend and continue the Act 32 and 33 Victoria, chapter 3, and to establish and provide for the Government of the province of Manitoba (commonly called and hereinafter cited as the Manitoba Act) which Act was confirmed by 'The British North America Act, 1871' (34-35 Vic., cap. 28, Imp.) it is provided that :

"In and for the province of Manitoba the said legislature of the province may exclusively make laws in relation to education, subject and according to the following provisions :

1. "Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law or practice in the province at the union.

2. "An appeal shall lie to the Governor General in Council from any Act or decision of the legislature of the province or of any provincial authority affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to education.

3. "In case any such provincial law as from time to time seems to the Governor-General in Council requisite for the due execution of the provisions of this section is not duly executed by the proper provincial authority in that behalf, then and in every such case, and as far only as the circumstances of each case require the Parliament of Canada may make remedial laws for the due execution of the provisions of this section and of any decision of the Governor General in Council under this section."

That by certain Acts of the legislature of the province of Manitoba passed after the Union, and by an Act passed by the said legislature in the forty-fourth year of Her Majesty's reign, chapter four, which may be cited as "The Manitoba School Act" and by the Acts amending the same, the Roman Catholic minority of Her Majesty's subjects in Manitoba acquired the rights and privileges in relation to education thereby conferred upon them, including the right to build, maintain, equip, manage, conduct and support Roman Catholic schools in the manner provided by the said Statutes, the right to a proportionate share of any grant made out of the public funds for the purpose of education, and the right of exemption of such members of the Roman Catholic Church as contribute to such Roman Catholic schools from all payments or contributions to the support of any other schools.

That subsequently in the fifty-third year of Her Majesty's reign two statutes were passed by the legislature of the province of Manitoba relating to education, which statutes came into force on the first day of May, 1890, and are intituled respectively "An Act respecting the Department of Education" and "An Act respecting Public Schools."

That the Roman Catholic minority of Her Majesty's subjects in Manitoba considered that by the two Statutes last mentioned the aforesaid rights and privileges

were affected, and that such minority was thereby deprived of said rights and privileges. That the said Roman Catholic minority thereupon appealed from the said two Statutes last mentioned to the Governor General in Council and by a petition presented on the 26th day of November, 1892, after setting out the facts of the case, prayed as follows:—

1. "That His Excellency the Governor General in Council might entertain the appeal and might consider the same and might make such provision and give such directions for the hearing and consideration of the said appeal as might be thought proper.

2. "That it might be declared that the said Acts (53 Victoria, chapters 37 and 38) do prejudicially affect the rights and privileges with regard to denominational schools, which Roman Catholics had by law or practice in the province at the union.

3. "That it might be declared that the said last mentioned Acts do affect the rights and privileges of the Roman Catholic minority of the Queen's subjects in relation to education.

4. "That it might be declared that to His Excellency the Governor General in Council, it seems requisite that the provisions of the statutes in force in the province of Manitoba, prior to the passage of the said Acts, should be re-enacted in so far at least as may be necessary to secure to the Roman Catholics in the said province the right to build, maintain, equip, manage, conduct and support these schools in the manner provided for by the said statutes, to secure to them their proportionate share of any grant made out of the public funds for the purposes of education and to relieve such members of the Roman Catholic Church as contribute to such Roman Catholic schools from all payment or contribution to the support of any other schools, or that the said Act of 1890 should be so modified or amended as to effect such purposes.

5. "And that such further or other declaration or order might be made as to His Excellency the Governor General in Council might, under the circumstances, seem proper, and that such directions might be given, provision made and all things done in the premises for the purpose of affording relief to the said Roman Catholic minority in the said province as to His Excellency the Governor General in Council might seem meet."

That the said petition was referred by the Governor General in Council to a sub-committee of Council. The sub-committee sat on the 26th day of November, 1892, when Mr. Ewart, Q.C., on behalf of the Roman Catholic minority, presented the said petition and stated reasons in support of the right of appeal. That the report of the sub-committee thereon was approved by Order of His Excellency in Council on the 29th day of December, 1892, and the 21st day of January, 1893, was then fixed as the day on which the parties concerned should be heard, with regard to the appeal. In the said report of the sub-committee, it is stated as follows:—

As to the request which the petitioners make in the second paragraph of their prayer, viz.:—"That it may be declared that the said Acts (53 Vic., chapters 37 and 38) do prejudicially affect the rights and privileges with regard to denominational schools which the Roman Catholics had by law or practice in the Province of Manitoba at the time of the union," the sub-committee are of opinion that the judgment of the Judicial Committee of the Privy Council is conclusive as to the rights with regard to denominational schools which the Roman Catholics had at the time of the union, and as to the bearing thereon of the statutes complained of, and Your Excellency is not therefore, in the opinion of the sub-committee, properly called upon to hear an appeal based on those grounds. That judgment is as binding on Your Excellency as it is on any of the parties to the litigation, and therefore, if redress is sought on account of the state of affairs existing in the province at the time of the union, it must be sought elsewhere and by other means than by way of appeal under the sections of the British North America Act and of the Manitoba Act, which are relied on by the petitioners as sustaining this appeal.

The two Acts of 1890, which are complained of, must, according to the opinion of the sub-committee, be regarded as within the powers of the legislature of Manitoba, but it remains to be considered whether the appeal should be entertained and heard as an appeal against statutes which are alleged to have encroached on rights and privileges with regard to denominational schools which were acquired by any class of persons in Manitoba, not at the time of the union, but after the union.

The sub committee were addressed by counsel for the petitioners as to the right to have the appeal heard, and from his argument, as well as from the documents, it would seem that the following are the grounds of the appeal.

A complete system of separate and denominational schools, *i.e.*, a system providing for public schools and for separate Catholic schools, was, it is alleged, established by Statute of Manitoba in 1871 and by a series of subsequent Acts. That system was in operation until the two Acts of 1890 (chapters 37 and 38) were passed.

The 93rd section of the British North America Act, in conferring power on the provincial legislatures, exclusively, to make laws in relation to education, imposed on that power certain restrictions, one of which was (subsection 1) to preserve the right with respect to denominational schools which any class of persons had by law in the province at the union. As to this restriction it seems to impose a condition on the validity of any Act relating to education, and the sub-committee have already observed that no question, it seems to them, can arise, since the decision of the Judicial Committee of the Privy Council.

The third subsection, however, is as follows:—

“Where in any province a system of separate or dissentient schools exists by law at the union, or is thereafter established by the legislature of the province, an appeal shall lie to the Governor General in Council, from any Act or decision of any provincial authority, affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to education.”

The Manitoba Act passed in 1870, by which the province of Manitoba was constituted, contains the following provisions, as regards that province:—

By section 22 the power is conferred on the legislature, exclusively, to make laws in relation to education, but subject to the following restrictions:

1. “Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have, by law or practice, in the province, at the union.”

This restriction, the sub committee again observe has been dealt with by the judgment of the Judicial Committee of the Privy Council.

Then follows:—

2. “An appeal shall lie to the Governor General in Council from any Act or decision of the legislature of the province, or of any provincial authority, affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to education.”

It will be observed that the restriction contained in subsection 3 is not identical with the restriction of subsection 3 of the 93rd section of the British North America Act, and questions are suggested, in view of this difference, as to whether subsection 3, of section 93 of the British North America Act applies to the Manitoba Act and if not whether subsection 2 of section 22 of the Manitoba Act is sufficient to sustain the case of the appellants; or, in other words, whether in regard to Manitoba, the minority has the same protection against laws which the legislature of the province has power to pass as the minorities in other provinces have under the subsection before quoted from the British North America Act, as to separate or denominational schools established after the union.

The argument presented by counsel on behalf of the petitioners was, that the present appeal comes before Your Excellency in Council, not as a request to review the decision of the Judicial Committee of the Privy Council, but as a logical consequence and result of that decision, inasmuch as the remedy now sought is provided by the British North America Act, and the Manitoba Act, not as a remedy to the minority against statutes which interfere with the rights which the minority had at the time of the union, but as a remedy against statutes which interfere with rights acquired by the minority after the union. The remedy, therefore, which is sought, is against Acts which are *intra vires* of the provincial legislature. His argument is also that the appeal does not ask Your Excellency to interfere with any rights or powers of the legislature of Manitoba, inasmuch as the power to legislate on the subject of education has only been conferred on that legislature with the distinct reservation that Your

Excellency in Council shall have power to make remedial orders against any such legislation which infringes on rights acquired after the union by any Protestant or Roman Catholic minority in relation to separate or dissentient schools.

Upon the various questions which arise on these petitions the sub-committee do not feel called upon to express an opinion, and so far as they are aware, no opinion has been expressed on any previous occasion in this case or any other of a like kind, by Your Excellency's Government or any other Government of Canada. Indeed, no application of a parallel character has been made since the establishment of the Dominion.

The application comes before Your Excellency in a manner differing from applications which are ordinarily made, under the constitution, to Your Excellency in Council. In the opinion of the sub-committee, the application is not to be dealt with at present as a matter of a political character or involving political action on the part of Your Excellency's advisers. It is to be dealt with by Your Excellency in Council, regardless of the personal views which Your Excellency's advisers may hold with regard to denominational schools and without the political action of any of the members of Your Excellency's Council being considered as pledged by the fact of the appeal being entertained and heard. If the contention of the petitioners be correct, that such an appeal can be sustained, the enquiry will be rather of a judicial than a political character. The sub-committee have so treated it in hearing counsel, and in permitting their only meeting to be open to the public. It is apparent that several other questions will arise, in addition to those which were discussed by counsel at that meeting, and the sub-committee advise that a date be fixed, at which the petitioners, or their counsel, may be heard with regard to the appeal, according to their first request.

The sub-committee think it proper that the Government of Manitoba should have an opportunity to be represented at the hearing, and they further recommend, with that view, that if this report should be approved, a copy of any minute approving it, and of any minute fixing the date of the hearing with regard to the appeal, be forwarded, together with copies of all the petitions referred to, to His Honour the Lieutenant-Governor of Manitoba, for the information of His Honour's advisers.

In the opinion of the sub-committee, the attention of any person who may attend on behalf of the petitioners, or on behalf of the Provincial Government, should be called to certain preliminary questions which seem to arise with regard to the appeal.

Among the questions which the sub-committee regard as preliminary are the following:—

(1.) Whether this appeal is such an appeal as is contemplated by subsection 3 of section 93 of the British North America Act or by subsection 2 of section 22 of the Manitoba Act.

(2.) Whether the grounds set forth in the petitions are such as may be the subject of appeal under either of the sub-sections above referred to.

(3.) Whether the decision of the Judicial Committee of the Privy Council in any way bears on the application for redress based on the contention that the rights of the Roman Catholic minority which accrued to them after the union have been interfered with by the two statutes of 1890 before referred to.

(4.) Whether subsection 3 of section 93 of the British North America Act applies to Manitoba.

(5.) Whether Your Excellency in Council has power to grant such orders as are asked for by the petitioner, assuming the material facts to be as stated in the petition.

(6.) Whether the Acts of Manitoba, passed before the session of 1890, conferred on the minority a "right or privilege with respect to education," within the meaning of subsection 2 of section 22 of the Manitoba Act, or established "a system of separate or dissentient schools," within the meaning of subsection 3 of section 93 of the British North America Act, and if so, whether the two Acts of 1890, complained of, affect "the right or privilege" of the minority in such a manner as to warrant the present appeal.

Other questions of a like character may be suggested at the hearing, and it may be desirable that arguments should be heard upon such preliminary points before any hearing shall take place on the merits of the appeal.



## Manitoba School Case.

That such appeal accordingly came on for hearing before the Governor General in Council on the 21st day of January, 1893, in the presence of counsel for the Roman Catholic minority, the Province of Manitoba, though duly notified, not appearing and when after hearing what was alleged on behalf of the Roman Catholic minority, it was considered that certain questions of law arising upon the appeal should be referred to the Supreme Court of Canada for hearing and consideration pursuant to the Supreme and Exchequer Courts Act (Revised Statutes of Canada, chapter 135) as amended by the Act of 1891 (54-55 Victoria, cap. 25), and that the further hearing should be adjourned until the advice of the court had been obtained thereon.

That pursuant to the Supreme and Exchequer Court Acts as so amended, the following questions were therefore referred to the Supreme Court of Canada by the Governor General in Council, namely:—

(1.) "Is the appeal referred to in the said memorials and petitions and asserted thereby, such an appeal as is admissible by subsection 3 of section 93 of 'The British North America Act, 1867,' or by subsection 2 of section 22 of 'The Manitoba Act,' 33 Victoria (1870), chapter 3 of Canada?"

(2.) "Are the grounds set forth in the petitions and memorials such as may be the subject of appeal under the authority of the subsections above referred to, or either of them?"

(3.) "Does the decision of the Judicial Committee of the Privy Council, in the case of *Barrett vs. The City of Winnipeg*, and *Logan vs. The City of Winnipeg*, dispose of or conclude the application for redress based on the contention that the rights of the Roman Catholic minority which accrued to them after the union, under the statutes of the province, has been interfered with by the two statutes of 1890, complained of in the said petitions and memorials."

(4.) "Does the subsection 3 of section 93 of 'The British North America Act, 1867,' apply to Manitoba?"

(5.) "Has His Excellency the Governor General in Council power to make the declarations or remedial orders which are asked for in the said memorials and petitions, assuming the material facts to be as stated therein, or has His Excellency the Governor General in Council any other jurisdiction in the premises?"

(6.) "Did the Acts of Manitoba relating to education, passed prior to the session of 1890, confer on or continue to the minority a 'right or privilege in relation to education,' within the meaning of subsection 2 of section 22 of 'The Manitoba Act,' or establish a system of separate or dissentient schools within the meaning of subsection 3 of section 93 of 'The British North America Act, 1867,' if said section 93 be found to be applicable to Manitoba; and if so, did the two Acts of 1890 complained of, or either of them affect any right or privilege of the minority in such manner that an appeal will lie thereunder to the Governor General in Council?"

That upon the hearing of the said reference before the Supreme Court of Canada, counsel for the Roman Catholic minority of Her Majesty's subjects in the Province of Manitoba, and counsel for the province of Manitoba appeared before the Supreme Court, as did also the Solicitor General for Canada, who appeared to submit the case on behalf of Her Majesty's Crown; that the Counsel for the province of Manitoba not desiring to be heard, the Supreme Court pursuant to section 4 of the Act of 1891, hereinbefore referred to, requested counsel to argue the case in the interest of the said province, and counsel thereupon appeared and argued the case for the said province as did also counsel for the Roman Catholic minority as aforesaid. That the case came on for argument before five judges of the Supreme Court, who, on the 20th of February, 1894, delivered their opinions thereon in the manner provided by the statutes: That in the result the opinions of the judges of the Supreme Court showed a majority of three judges out of five for a negative answer to all the six questions submitted for the opinion of the Supreme Court: That the Roman Catholic minority feeling aggrieved by the said opinions, presented a petition to Her Majesty in Council, praying for special leave to appeal therefrom to Her Majesty in Council and by Her Majesty's Order in Council of the 27th June, 1894, leave to appeal was granted accordingly.

That such appeal to Her Majesty in Council was duly perfected and was heard before the Judicial Committee of Her Majesty's Privy Council on 11th, 12th and 13th days of December, 1894, counsel being then heard both on behalf of the appellants and the province of Manitoba, and on the 29th day of January following the Lords of the Judicial Committee delivered judgment allowing the appeal and reversing the opinion of the Supreme Court of Canada, their Lordships stating that they were unable to see how the question as to whether a right or privilege which the Roman Catholic minority previously enjoyed had been affected by the legislation of 1890, could receive any but an affirmative answer and added :

"Contrast the position of the Roman Catholics prior and subsequent to the Acts from which they appeal. Before these passed into law there existed denominational schools of which the control and management were in the hands of Roman Catholics who could select the books to be used and determine the character of the religious teachings. These schools received their proportionate share of the money contributed for school purposes out of the general taxation of the province, and the money raised for those purposes by local assessment was, so far as it fell upon Catholics, applied only towards the support of Catholic schools. What is the position of the Roman Catholic minority under the Acts of 1890? Schools of their own denomination, conducted according to their views, will receive no aid from the State. They must depend entirely for their support upon the contributions of the Roman Catholic community, while the taxes out of which State aid is granted to the schools provided for by the statute fall alike on Catholics and Protestants. Moreover, while Catholic inhabitants remain liable to local assessment for school purposes, the proceeds of that assessment are no longer destined to any extent for the support of Catholic schools, but afford the means of maintaining schools which they regard as no more suitable for the education of Catholic children than if they were distinctly Protestant in their character.

"In view of this comparison, it does not seem possible to say that the rights and privileges of the Roman Catholic minority in relation to education which existed prior to 1890 have not been affected."

Their Lordships also stated :—

"As a matter of fact the objection of Roman Catholics to schools such as alone receive State aid under the Act of 1890 is conscientious and deeply rooted. If this had not been so, if there had been a system of public education acceptable to Catholics and Protestants alike, the elaborate enactments which have been the subject of so much controversy and consideration would have been unnecessary. It is notorious that there were acute differences of opinion between Catholics and Protestants on the education question prior to 1870. This is recognized and emphasized in almost every line of those enactments. There is no doubt either what the points of difference were, and it is in the light of these that the 22nd section of "The Manitoba Act" of 1870, which was in truth a parliamentary compact, must be read."

And in conclusion their Lordships added :—

"For the reasons which have been given, their Lordships are of opinion that the 2nd subsection of section 22 of 'The Manitoba Act' is the governing enactment and that appeal to the Governor General in Council was admissible by virtue of that enactment, on the grounds set forth in the memorials and petitions, inasmuch as the Acts of 1890 affected rights or privileges of the Roman Catholic minority in relation to education within the meaning of that subsection. The further question is submitted whether the Governor General in Council has power to make the declarations or remedial orders asked for in the memorials or petitions or has any other jurisdiction in the premises. Their Lordships have decided that the Governor General in Council has jurisdiction and that the appeal is well founded, but the particular course to be pursued must be determined by the authorities to whom it has been committed by the statute. It is not for this tribunal to intimate the precise steps to be taken. Their general character is sufficiently defined by the 3rd subsection of section 22 of 'The Manitoba Act.'

"It is certainly not essential that the statutes repealed by the Act of 1890 should be re enacted or that the precise provisions of these statutes should again be made law. The system of education embodied in the Acts of 1890 no doubt commends itself to and

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adequately supplies the wants of the great majority of the inhabitants of the province. All legitimate ground of complaint would be removed if that system were supplemented by provisions which would remove the grievance upon which the appeal is founded and were modified so far as might be necessary to give effect to these provisions."

The Lords of the Committee thereupon reported to Her Majesty that the said questions hereinbefore set forth ought to be answered as follows:—

1. "In answer to the first question: That the appeal referred to in the said memorials and petitions and asserted thereby is such an appeal as is admissible under subsection 2 of section 22 of 'The Manitoba Act,' 33 Victoria (1870) chapter 3, Canada.

2. "In answer to the second question: That grounds are set forth in the petitions and memorials such as may be the subject of appeal under the authority of the subsection of 'The Manitoba Act' above referred to.

3. "In answer to the third question: That the decision of the Judicial Committee of the Privy Council in the cases of *Barrett vs. The City of Winnipeg*, and *Logan vs. The City of Winnipeg*, does not dispose of or conclude the application for redress based on the contention that the rights of the Roman Catholic minority which accrued to them after the union under the statutes of the province have been interfered with by the two statutes of 1890, complained of in the said petition and memorials.

4. "In answer to the 4th question: That subsection 3 of section 93 of 'The British North America Act 1867,' did not apply to Manitoba.

5. "In answer to the 5th question: That the Governor General in Council has jurisdiction and the Appeal is well founded but that the particular course to be pursued must be determined by the authorities to whom it has been committed by the statute; that the general character of the steps to be taken is sufficiently defined by subsection 3 of section 22 of 'The Manitoba Act' of 1870.

6. "In answer to the 6th question: That the Acts of Manitoba relating to education passed prior to the session of 1890, did confer on the minority a right or privilege in relation to education within the meaning of subsection 2 of section 22 of 'The Manitoba Act' which alone applies; that the two Acts of 1890 complained of did affect a right or privilege of the minority in such a manner that an appeal will lie thereunder to the Governor General in Council."

And Her Majesty at the Court at Osborne House in the Isle of Wight, on the 2nd day of February, 1895, after taking the said report into consideration was pleased by and with the advice of Her Majesty's Privy Council to approve of the said report of the Lords of the Committee and to order that "the recommendation and directions therein contained be punctually observed, obeyed and carried into effect in each and every particular, whereof the Governor General of the Dominion of Canada for the time being and all other persons whom it may concern, are required to take notice and govern themselves accordingly."

That after the determination of the said questions by Her Majesty in Council as aforesaid the said appeal of the Roman Catholic minority of Her Majesty's subjects in Manitoba from the two statutes of the legislature of the province of Manitoba hereinbefore mentioned came on for further hearing before Your Excellency in Council on the 26th day of February, and the 5th, 6th and 7th days of March, 1895, in the presence of counsel both for the Roman Catholic minority of Her Majesty's subjects in the province of Manitoba and for the said province; and the committee having heard and considered what was alleged by counsel on both sides as well as the judgment of their Lordships of the Judicial Committee of the Privy Council is of opinion that effect should be given to the said appeal and that the said appeal should be allowed in so far as it relates to rights acquired by the said Roman Catholic minority under legislation of the province of Manitoba passed subsequently to the union of the province with the Dominion of Canada.

The Committee therefore recommend that the said appeal be allowed and that Your Excellency in Council do adjudge and decide that by the two Acts passed the legislature of the province of Manitoba on the 1st day of May, 1890, intitled respectively "An Act respecting the Department of Education," and "An Act respecting the Public Schools," the rights and privileges of the Roman Catholic minority of the said province

in relation to education, prior to the 1st day of May, 1890, have been affected by depriving the Roman Catholic minority of the following rights and privileges, which previous to and until the 1st day of May, 1890, such minority had, viz. :

(a.) The right to build, maintain, equip, manage, conduct and support Roman Catholic schools in the manner provided for by the said statutes, which were repealed by the two Acts of 1890 aforesaid.

(b.) The right to share proportionately in any grant made out of the public funds for the purposes of education.

(c.) The right of exemption of such Roman Catholics as contribute to Roman Catholic schools from all payment or contribution to the support of any other schools.

And the Committee also recommend that Your Excellency in Council do further declare and decide that for the due execution of the provisions of section 22 of "The Manitoba Act," it seems requisite that the system of education embodied in the two Acts of 1890 aforesaid should be supplemented by a provincial Act or Acts which would restore to the Roman Catholic minority the said rights and privileges of which such minority has been so deprived as aforesaid and which would modify the said Acts of 1890 so far, and so far only, as may be necessary to give effect to the provisions restoring the rights and privileges in paragraphs (a), (b) and (c) hereinbefore mentioned.

The Committee desire to add that : Their Lordships of the Judicial Committee state in their judgment :—

"Bearing in mind the circumstances which existed in 1870, it does not appear to their Lordships an extravagant notion that in creating a legislature for the province with limited powers, it should have been thought expedient in case either Catholics or Protestants became preponderant, and rights which had come into existence under different circumstances were interfered with, to give the Dominion Parliament power to legislate upon matters of education so far as was necessary to protect the Protestant or Catholic minority as the case might be."

In the opinion of the Committee "The Manitoba Act" as construed with regard to the present case by the Judicial Committee of Her Majesty's Privy Council, so clearly points to a duty devolving upon Your Excellency in Council that no course is open consistent with both the letter and the spirit of the constitution other than that recommended. To dismiss this appeal would be not only to deny to the Roman Catholic minority rights substantially guaranteed to them under the constitution of Canada, but in truth such a course might involve the declaration on the part of Your Excellency in Council that this provision of the constitution for the protection of the rights of certain of Her Majesty's subjects in Manitoba should not in any case be acted upon ; and further the Committee do not perceive upon what principle consistently with a declaration that effect is not to be given to this appeal, the Protestant or Roman Catholic minority in Quebec or Ontario could invoke the corresponding provision of section 93 of "The British North America Act" in case of any provincial Act or decision affecting their rights or privileges.

If Your Excellency should see fit to approve of the foregoing recommendation, the Committee desire to state that it follows that refusal or neglect on the part of the legislature of Manitoba to enact remedial legislation which to Your Excellency in Council seems requisite will confer upon Parliament authority to pass such a law. In this connection, it was urged by Counsel on behalf of the province that should Parliament legislate under these circumstances its enactment would be absolute and irrevocable so far as both parliament and the provincial legislature are concerned.

The Committee, without necessarily adopting this view, observe that section 22 of "The Manitoba Act" may admit of that construction. The Committee, therefore, recommend that the provincial legislature be requested to consider whether its action upon the decision of Your Excellency in Council should be permitted to be such as, while refusing to redress a grievance which the highest court in the empire has declared to exist, may compel parliament to give the relief of which under the constitution the provincial legislature is the proper and primary source, thereby according to this view, permanently divesting itself in a very large measure of its authority and so establishing

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in the province an educational system which no matter what changes may take place in the circumstances of the country or the views of the people, cannot be altered or repealed by any legislative body in Canada.

The Committee, further and for the reasons hereinbefore stated, recommend that if Your Excellency in Council should be pleased to approve of this report, Your Excellency in Council do make an order in the premises in the from and to the effect as set forth hereunto submitted, and that a certified copy of this Minute and of the said Order be transmitted to His Honour the Lieutenant-Governor of Manitoba for his information and that of his government and provincial legislature, also that a certified copy of this minute and of the said order be transmitted to Mr. Ewart, Q.C., of Winnipeg, as representing the Roman Catholic minority of Her Majesty's subjects in Manitoba.

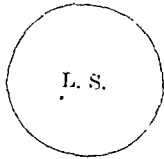
All of which is respectfully submitted for Your Excellency's approval.

JOHN J. MCGEE,

*Clerk of the Queen's Privy Council for Canada.*

(Sd.) ABERDEEN.

Privy.



Seal.

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AT THE GOVERNMENT HOUSE AT OTTAWA,  
THURSDAY, the 21st day of March, 1895.

*Present:*

HIS EXCELLENCY THE GOVERNOR GENERAL.

The Honourable Sir Mackenzie Bowell.

Sir Adolph P. Caron.

John Costigan.

George E. Foster.

Sir Charles Hibbert Tupper.

John Haggart.

The Honourable J. A. Ouimet.

T. Mayne Daly.

A. R. Angers..

W. B. Ives.

A. R. Dickey.

W. H. Montague.

In Council.

Whereas, on the 26th day of November, 1892, a petition by way of appeal under the provision of section 22 of chapter 3 of the Acts of the Parliament of Canada, passed in the 33rd year of Her Majesty's reign, and intituled "An Act to amend and continue the Act 32-33 Victoria, chapter 3, and to establish and provide for the government of the province of Manitoba (commonly called 'The Manitoba Act') and confirmed by the British North America Act of 1871," was presented to His Excellency the Governor-General of Canada in Council, by and on behalf of the Roman Catholic minority of Her Majesty's subjects, in the province of Manitoba, which petition, among other things, alleged in effect that by certain Acts of the legislature of the province of Manitoba, passed after the union, and by an Act passed by the said legislature in the forty-fourth year of Her Majesty's reign, chapter four, which may be cited as "The Manitoba School Act" and by the Acts amending the same, the Roman Catholic minority of Her Majesty's subjects in Manitoba acquired the rights and privileges in relation to education thereby conferred upon them, including the right to build, maintain, equip, manage, conduct and support Roman Catholic schools in the manner provided by the said statutes, the right to a proportionate share of any grant made out of the public funds for the purposes of education, and the right of exemption of such members of the Roman Catholic Church as contribute to such Roman Catholic schools from all payments or contributions to the support of any other schools.

That subsequently, in the 53rd year of Her Majesty's reign, two statutes were passed by the legislature of the province of Manitoba, relating to education, which statutes came into force on the first day of May, 1890, and are intituled respectively "An Act respecting the Department of Education" and "An Act respecting Public Schools," and that the effect of the two last named statutes was to repeal the previous Acts of the province of Manitoba in relation to education, and to deprive the Roman Catholic minority of the rights and privileges which it had acquired under such previous statutes; and by the said petition, the said Roman Catholic minority prayed among other things :—

## Manitoba School Case.

That it might be declared that the said last mentioned Acts did affect the rights and privileges of the said Roman Catholic minority of the Queen's subjects in relation to education :—

That it might be declared that to His Excellency the Governor-General in Council it seems requisite that the provisions of the statutes in force in the province of Manitoba, prior to the passage of the said Acts, should be re-enacted in so far, at least, as may be necessary to secure to the Roman Catholics in the said Province the right to build, maintain, equip, manage, conduct and support their schools in the manner provided for by said statutes, to secure to them their proportionate share of any grant made out of the public funds for the purposes of education, and to relieve such members of the Roman Catholic Church as contribute to such Roman Catholic schools from all payment or contribution to the support of any other schools; or that the said Acts of 1890 should be so modified or amended as to effect such purposes :—

And that such further or other declaration or order might be made as to His Excellency the Governor General in Council should, under the circumstances, seem proper, and that such directions might be given, provisions made, and all things done in the premises, for the purpose of affording relief to the said Roman Catholic minority in the said Province, as to His Excellency in Council might seem meet.

And whereas the 26th day of February, 1895, having been appointed for the hearing of the said appeal, and the same coming on to be heard on that day, and on the 5th, 6th and 7th days of March, 1895, in the presence of counsel for the Petitioners (the said Roman Catholic minority of Her Majesty's subjects in the province of Manitoba) and as well for the province of Manitoba, upon reading the said petition and the statutes therein referred to, and upon hearing what was alleged by counsel on both sides, His Excellency the Governor General in Council was pleased to order and adjudge, and it is hereby ordered and adjudged, that the said appeal be, and the same is hereby allowed, in so far as it relates to rights acquired by the said Roman Catholic minority under legislation of the province of Manitoba, passed subsequent to the union of that province with the Dominion of Canada, and His Excellency the Governor General in Council was pleased to adjudge and declare, and it is hereby adjudged and declared that by the two Acts passed by the Legislature of the province of Manitoba, on the first day of May, 1890, intituled respectively "An Act respecting the Department of Education," and "An Act respecting Public Schools," the rights and privileges of the Roman Catholic minority of the said province, in relation to education, prior to the 1st day of May, 1890, have been affected by depriving the Roman Catholic minority of the following rights and privileges, which, previous to and until the 1st day of May, 1890, such minority had, viz :—

(a) The right to build, maintain, equip, manage, conduct and support Roman Catholic schools, in the manner provided for by the said statutes which were repealed by the two Acts of 1890, aforesaid.

(b) The right to share proportionately in any grant made out of the public funds for the purposes of education.

(c) The right of exception of such Roman Catholics as contribute to Roman Catholic schools from all payment or contribution to the support of any other schools.

And His Excellency the Governor General in Council was further pleased to declare and decide, and it is hereby declared that it seems requisite that the system of education embodied in the two Acts of 1890, aforesaid, shall be supplemented by a Provincial Act or Acts which will restore to the Roman Catholic minority the said rights and privileges of which such minority has been so deprived as aforesaid, and which will modify the said Acts of 1890, so far and so far only as may be necessary to give effect to the provisions restoring the rights and privileges in paragraphs (a), (b), (c), hereinbefore mentioned.

Whereof the Lieutenant Governor of the province of Manitoba for the time being, and the legislature of the said province, and all persons whom it may concern, are to take notice and govern themselves accordingly.

JOHN J. MCGEE,  
*Clerk of the Queen's Privy Council for Canada.*  
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## MESSAGE.

(20a)

## ABERDEEN.

The Governor General transmits to the House of Commons, the Manitoba School Case, 1894, being a report of the proceedings before the Judicial Committee of Her Majesty's Privy Council, edited for the Canadian Government by the Appellants' Solicitors in London.

GOVERNMENT HOUSE,  
OTTAWA, May, 1895.

## THE MANITOBA SCHOOL CASE, 1894.

### IN THE PRIVY COUNCIL.

ON APPEAL FROM THE SUPREME COURT OF CANADA.

*In the matter of certain Statutes of the Province of Manitoba relating to Education.*

Between Gerald F. Brophy and Noe Chevrier and Henry Napoleon Boire and Roger Goulet and Patrick O'Connor and Francis McPhillips and Frank I. Clark and Joseph Lecomte and Michael Hughes and Henry Brownrigg and Frank Brownrigg and Theophilus Tessier and L. Arthur Leveque and Edmond Trudel and Joseph Honoré Octavien Lambert and Jean Baptiste Poirier and George Couture and J. Ernest Cyr and François Jean and David Dussault and Charles Edouard Masse and François Hardis and Joseph Buron and Louis Pournier and Philéas Trudeau and Edouard Guilbault and Romuald Guilbault and Alphonse Phaneuf and W. Cleophas German and Edward R. Lloyd and Louis Laventure and Louis J. Collin, all of the province of Manitoba, in the Dominion of Canada, on behalf of themselves and of all other persons forming the Roman Catholic minority of the Queen's subjects in the province,

*Appellants :*

AND THE ATTORNEY GENERAL OF MANITOBA,

*Respondent.*

### CASE OF THE APPELLANTS.

1. This is an appeal from the judgment of the Supreme Court of Canada rendered on the 20th February, 1894, upon a case referred by the Governor General in Council to the Supreme Court of Canada for hearing and consideration pursuant to the provisions of the Act respecting the Supreme and Exchequer Courts (Revised Statutes of Canada, chapter 135), as amended by an Act of Canada passed in 1891 (54 and 55 Vic., cap. 25, sec. 4).



2. The questions involved turn upon the construction of certain sections of the British North America Act and of the Manitoba Act and upon the effect of certain statutes of the province of Manitoba.

3. In the year 1890 certain Acts were passed by the Legislature of Manitoba, viz. : chapters 37 and 38 of 53 Victoria, entitled respectively "*An Act respecting the Department of Education*," and "*An Act respecting Public Schools*" which affected very injuriously certain rights and privileges of the Roman Catholic minority of the Queen's subjects in that province in relation to education acquired by them under various prior statutes of the Legislative Assembly of Manitoba, as well as rights and privileges possessed by them before the creation of Manitoba as one of the provinces of Canada.

4. Manitoba was created a province by the Act of Canada, commonly known as "The Manitoba Act, 1870" (33 Vic. cap. 3). This Act was confirmed and declared to be valid and effectual by a statute of the United Kingdom (34 Vic., cap. 28). The second section of the Manitoba Act, 1870, provides that from and after a day named "the provisions of the British North America Act, 1867, shall, except those parts thereof which are in terms made, or by reasonable intendment, may be held to be specially applicable to, or only to affect one or more, but not the whole of the provinces now composing the Dominion, and except so far as the same may be varied by this Act, be applicable to the province of Manitoba, in the same way, and to the like extent as they apply to the several provinces of Canada, and as if the province of Manitoba had been one of the provinces originally united by the said Act."

5. Provisions are made by the 93rd section of the British North America Act, 1867, and the 22nd section of the Manitoba Act, 1870, for an appeal to the Governor General in Council from Acts of the Legislative Assembly affecting the rights and privileges aforesaid.

6. Section 93 of the British North America Act, 1867, provides as follows :—

"In and for each province the legislature may exclusively make laws in relation to education, subject and according to the following provisions :—

"(1.) Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law in the province at the union.

"(2.) All the powers, privileges and duties at the union by law conferred and imposed in Upper Canada on the separate schools and school trustees of the Queen's Roman Catholic subjects, shall be and the same are hereby extended to the dissentient schools of the Queen's Protestant and Roman Catholic subjects in Quebec.

"(3.) Where in any province a system of separate or dissentient schools exists by law at the union, or is thereafter established by the legislature of the province, an appeal shall lie to the Governor General in Council from any act or decision of any provincial authority affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to education.

"(4.) In case any such provincial law as from time to time seems to the Governor General in Council requisite for the due execution of the provisions of this section is not made, or in case any decision of the Governor General in Council on any appeal under this section is not duly executed by the proper provincial authority in that behalf, then, and in every such case, and as far only as the circumstances of each case require, the Parliament of Canada may make remedial laws for the due execution of the provisions of this section, and of any decision of the Governor General in Council under this section."

7. Section 22 of the Manitoba Act, 1870, provides as follows :—

"In and for the province, the said legislature may exclusively make laws in relation to education, subject and according to the following provisions :—

"(1.) Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law or practice in the province at the union.

"(2.) An appeal shall lie to the Governor General in Council from any act or decision of the legislature of the province, or of any provincial authority, affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to education.

"(3.) In case any such provincial law, as from time to time seems to the Governor General in Council requisite for the due execution of the provisions of this section is not made, or in case any decision of the Governor General in Council on any appeal under this section is not duly executed by the proper provincial authority in that behalf, then, and in every such case and as far only as the circumstances of each case require, the Parliament of Canada may make remedial laws for the due execution of the provisions of this section, and of any decision of the Governor General in Council under this section."

8. Memorials and petitions were presented to the Governor General of Canada in Council and among the rest one by the appellants and by many other Roman Catholic inhabitants of the province and on behalf of the Roman Catholic minority of the Queen's subjects in the province by way of appeal from the two Acts of Manitoba of 1890, before referred to, which petition prayed as follows:—

"(1.) That Your Excellency the Governor General in Council may entertain the said appeal and may consider the same, and may make such provision and give such directions for the hearing and consideration of the said appeal as may be thought proper.

"(2.) That it may be declared that the said Acts (53 Vic., chaps. 37 & 38) do prejudicially affect the rights and privileges with regard to denominational schools which Roman Catholics had by law or practice in the province at the union.

"(3.) That it may be declared that the said last mentioned Acts do affect the rights and privileges of the Roman Catholic minority of the Queen's subjects in relation to education.

"(4.) That it may be declared that to Your Excellency the Governor General in Council, it seems requisite that the provisions of the Statutes in force in the Province of Manitoba prior to the passage of the said Acts, should be re-enacted in so far at least as may be necessary to secure to the Roman Catholics in the said province the right to build, maintain, equip, manage, conduct and support these schools in the manner provided for by the said Statutes, to secure to them their proportionate share of any grant made out of the public funds for the purposes of education and to relieve such members of the Roman Catholic Church as contribute to such Roman Catholic Schools from all payment or contribution to the support of any other schools, or that the said Acts of 1890 should be so modified or amended as to effect such purposes.

"(5.) And that such further or other declaration or order may be made as to Your Excellency the Governor General in Council shall, under the circumstances, seem proper, and that such directions may be given, provisions made and all things done in the premises for the purpose of affording relief to the said Roman Catholic minority in the said province as to Your Excellency in Council may seem meet."

9. Thereafter the case hereinbefore mentioned was referred to the Supreme Court of Canada, by which case various questions were submitted for the opinion of the court. These were as follows:

"(1.) Is the appeal referred to in the said memorials and petitions and asserted thereby, such an appeal as is admissible by subsection 3 of section 93 of the British North America Act, 1867, or by subsection 2 of section 22 of the Manitoba Act, 33 Vic. (1870) chapter 3, Canada?

"(2.) Are the grounds set forth in the petitions and memorials such as may be the subject of appeal under the authority of the sub-sections above referred to, or either of them?

"(3.) Does the decision of the Judicial Committee of the Privy Council in the cases of *Barrett vs. The City of Winnipeg*, and *Logan vs. The City of Winnipeg* dispose of or conclude the application for redress based on the contention that the rights of the Roman Catholic minority which accrued to them after the union under the statutes of the province have been interfered with by the two statutes of 1890, complained of in the said petitions and memorials?

"(4.) Does subsection 3 of section 93 of the British North America Act, 1867, apply to Manitoba?

## Manitoba School Case.

"(5.) Has His Excellency the Governor General in Council power to make the declarations or remedial orders which are asked for in the said memorials and petitions, assuming the material facts to be as stated therein, or has His Excellency the Governor General in Council any other jurisdiction in the premises ?

"(6.) Did the Acts of Manitoba relating to education, passed prior to the session of 1890, confer on or continue to the minority a 'right or privilege in relation to education' within the meaning of subsection 2 of section 22 of the Manitoba Act, or establish a system of separate or dissentient schools 'within the meaning of sub-section 3 of section 93 of the British North America Act, 1867,' if said section 93 be found to be applicable to Manitoba : and if so did the two acts of 1890 complained of, or either of them, affect any right or privilege of the minority in such a manner that an appeal will lie thereunder to the Governor General in Council ?"

10. Counsel for the appellants and other Roman Catholics as aforesaid and for the province of Manitoba appeared before the Supreme Court as did also the Solicitor General for Canada who appeared to submit the case on behalf of the Crown. The counsel of Manitoba not desiring to be heard, the Supreme Court pursuant to section 4 of the Canadian Act of 1891, before referred to, requested counsel to argue the case as to the interest of Manitoba, and such last mentioned counsel thereupon appeared and argued the case for Manitoba as did also counsel for the appellants and other Roman Catholics as aforesaid, but the Solicitor General did not desire to be heard.

11. Afterwards written judgments were delivered by the five judges who heard the arguments. The result was to show a majority of three judges out of five for a negative answer to all of the questions.

The Chief Justice answered all the questions in the negative.

Mr. Justice Fournier answered the third question in the negative and all the others in the affirmative.

Mr. Justice Taschereau answered the third question in the affirmative and all the others in the negative.

Mr. Justice Gwynne answered the first, second, fourth and fifth questions in the negative, the third in the affirmative, and the sixth as follows : "The Acts of 1890 do not nor does either of them affect any right or privilege of a minority in relation to education within the meaning of subsection 2 of section 22 of the Manitoba Act in such manner that an appeal will lie thereunder to the Governor General in Council. The residue of the question is answered by the answer to question No. 4."

And Mr. Justice King answered all the questions except the third and fourth in the affirmative, the third in the negative and to the fourth he replied : "Yes, to the extent as explained by the above reasons for my opinion."

12. The appellants submit that the answers of the majority of the Supreme Court are wrong, save as to question 3, and that the answers to all the questions save question 3 should be in the affirmative ; and that the judgment should be varied and it should be declared accordingly, for the following among other

### REASONS.

(1.) Because there are several marked distinctions of the same character, between the language of the first and that of the second subsection of the clause of the Manitoba Act, and between the language of the first and that of the third subsection of the clause of the British North America Act, showing that the first subsection of each clause relates to a different class of cases and to a different condition from that dealt with by the later subsection.

For example, subsection 1 of the Manitoba Act refers to a right or privilege with respect to denominational schools ; subsection 2 to a right or privilege in relation to education.

Subsection 1 refers to a right or privilege of any class of persons, whether such class constitutes a majority of the population or not ; subsection 2 to a right or privilege of the Protestant or Roman Catholic minority.

Subsection 1 relates to any right or privilege existing by law or practice at the union ; subsection 2 to any right or privilege existent at the date of the provincial Act or decision complained of, although created after the union.

Subsection 1 is limited to cases in which the right or privilege is prejudicially affected ; subsection 2 is not so restricted, and would thus extend to a case in which the relative status was altered by an improvement in the position, even though that of the minority was not in itself changed for the worse.

(2.) Because an attempted law in violation of the earlier sub-sections of each clause would be *ultra vires* and absolutely void, and any attempt to enforce it could be successfully resisted in the courts by any person aggrieved. These sub-sections are thus complete in themselves, and no appeal to the Governor in Council, nor any decision or legislation by either legislature, would be requisite, appropriate or useful. But the classes of cases dealt with by the later sub-sections are those in which the legislative action is not *ultra vires* or absolutely void, and in which an appeal and decision or legislation might be requisite, appropriate and useful.

(3.) Because the Manitoba Education Acts passed prior to 1890 did confirm or continue to the minority a right or privilege in relation to education within the meaning of sub-section 2 of the Manitoba clause, and did establish a system of separate or dissentient schools within the meaning of sub-section 2 of the British North America clause ; and the Manitoba Acts of 1890 did affect a right and privilege of the minority in such sort that an appeal lies to the Governor in Council.

(4.) Because the appeal is admissible under the law ; the grounds set forth in the petitions and memorials are such as may be the subject of an appeal ; the decision in *Barrett v. Winnipeg* does not dispose of or conclude the contention of the minority ; sub-section 3 of the British North America clause does apply to Manitoba, and His Excellency the Governor General in Council has power to make the declaration or order prayed for, or to give other appropriate relief, if it shall seem expedient to him so to do.

EDWARD BLAKE.

JOHN S. EWART.

# Manitoba School Case.

## IN THE PRIVY COUNCIL.

ON APPEAL FROM THE SUPREME COURT OF CANADA.

*In the matter of certain Statutes of the Province of Manitoba relating to Education.*

Between Gerald F. Brophy and Noc Chevrier and Henry Napoleon Boire and Roger Goulet and Patrick O'Connor and Francis McPhilips and Frank I. Clarke and Joseph Lecomte and Michael Hughes and Henry Brownrigg and Frank Brownrigg and Theophilus Tessier and L. Arthur Leveque and Edmond Trudel and Joseph Honoré Octavien Lambert and Jean Baptiste Poirier and George Couture and J. Ernest Cyr and François Jean and David Dussault and Charles Edouard Masse and François Hardis and Joseph Buron and Louis Fournier and Philéas Trudeau and Edouard Guilbault and Romuald Guilbault and Alphonse Phaneuf and W. Cléophas German and Edward R. Lloyd and Louis Laventure and Louis J. Collin, all of the province of Manitoba, in the Dominion of Canada, on behalf of themselves and of all other persons, forming the Roman Catholic minority of the Queen's subjects in the province

*Appellants.*

AND THE ATTORNEY GENERAL OF MANITOBA.

*Respondent.*

## CASE OF THE RESPONDENT.

1. This is an appeal by special leave of Her Majesty in Council from the opinion of the Supreme Court of Canada, dated the 20th February, 1894, on a certain case referred by the Governor General to the said court for hearing and consideration. By the case various questions were submitted for the opinion of the court, but the substantial questions at issue were, whether either under subsection 3 of section 93 of the British North America Act, 1867, or under subsection 2 of section 22 of the Manitoba Act, 33 Vic., chapter 3 (Dominion statute) any appeal lay to the Governor General in Council from two statutes passed by the legislature of Manitoba in the year 1890, whereby a general system of nonsectarian public education was established in the place of the denominational system that had previously existed, and whether the Governor General in Council had power to make the declarations or remedial orders which were asked for in certain memorials that had been presented to His Excellency in Council, complaining of those statutes.

2. The case was stated and referred by the Governor General in Council to the Supreme Court of Canada, pursuant to "The Supreme and Exchequer Courts Act," Revised Statutes of Canada, chapter 135, as amended by 54 and 55 Vic., chapter 25, section 4 (Dominion statute), in consequence of the above-mentioned memorials, which had been presented by or on behalf of the Roman Catholic minority in Manitoba. The memorialists complained that their rights and privileges in relation to education had been affected by the two statutes before mentioned, and asked for a declaration that such rights and privileges had been prejudicially affected by the said statutes, and that the Governor General in Council should give such directions and make such remedial orders for the relief of the Roman Catholics of the province of Manitoba as to His Excellency in Council might seem fit.

3. The Supreme Court of Canada, consisting of Strong, C. J., Fournier, Taschereau, Gwynne, and King, J. J., after argument decided by a majority that no such appeal lay from the said statutes, and Strong, C. J., and Taschereau and Gwynne, J. J., held that no appeal lay and that the Governor General in Council had not the power to make the orders asked for : Fournier and King, J. J., were of the contrary opinion.

4. Manitoba joined the union in 1870 upon the terms of the Manitoba Act, 33 Vic., chapter 3 (Dominion statute), which Act was declared valid and effectual by the British North America Act, 1871, 34 and 35 Vic., chapter 28, section 5. The questions submitted for the opinion of the Supreme Court turned upon the construction of sections 2 and 22 of the Manitoba Act and section 93 of the British North America Act 1867.

5. It is enacted by section 2 of the Manitoba Act as follows :—

“(2.) On and after the said day on which the order of the Queen in Council shall take effect as aforesaid, the provisions of the British North America Act, 1867, shall, except those parts which are in terms made or by reasonable intendment may be held to be specially applicable to or only to affect one or more but not the whole of the provinces now composing the Dominion, and except so far as the same may be varied by this Act, be applicable to the province of Manitoba in the same way and to the same extent as they apply to the several provinces of Canada, and as if the province of Manitoba had been one of the provinces originally united by the said Act.”

And it is enacted by section 22 of the Manitoba Act and by section 93 of the British North America Act, 1867, as follows :—

*The Manitoba Act.*

“22. In and for the province (*i.e.*, of Manitoba) the said legislature (*i.e.*, the provincial legislature) may exclusively make laws in relation to education, subject and according to the following provisions :

“(1) Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law or practice in the province at the union.

“(2.) An appeal shall lie to the Governor General in Council from any act or decision of the legislature of the province, or of any provincial authority, affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to education.

“(3.) In case any such provincial law as from time to time seems to the Governor-General in Council requisite for the due execution of the provisions of this section is not made, or in case any decision of the Governor-General in Council on any appeal under this section is not duly executed by the proper provincial authority in that behalf, then, and in every such case, and as far only as the circumstances of each case require, the Parliament of Canada may make remedial laws for the due execution of the provisions of this section, and of any

*The British North America Act, 1867.*

“93. In and for each province the legislature (*i.e.*, the provincial legislature) may exclusively make laws in relation to education, subject and according to the following provisions :

“(1) Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law in the province at the union.

“(2.) All the powers, privileges, and duties at the union by law conferred and imposed in Upper Canada on the separate schools and school trustees of the Queen's Roman Catholic subjects shall be and the same are hereby extended to the dissentient schools of the Queen's Protestant and Roman Catholic subjects in Quebec.

“(3.) Where in any province a system of separate or dissentient schools exists by law at the union, or is thereafter established by the legislature of the province, an appeal shall lie to the Governor General in Council from any act or decision of any provincial authority affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to education.

“(4.) In case any such provincial law as from time to time seems to the Governor

decision of the Governor General in Council under this section."

General in Council requisite for the due execution of the provisions of this section is not made, or in case any decision of the Governor General in Council on any appeal under this section is not duly executed by the proper provincial authority in that behalf, then, and in every such case, and as far only as the circumstances of each case require, the Parliament of Canada may make remedial laws for the due execution of the provisions of this section, and of any decision of the Governor General in Council under this section."

6. The Governor General in Council, in submitting the case to the Supreme Court, set forth the evidence in two cases, called Barrett's case and Logan's case, as the evidence on which the case was to be decided. The proceedings in those two cases were initiated in the Court of Queen's Bench for Manitoba, and the matter came on appeal before the Judicial Committee of the Privy Council. The question at issue was, whether the Public Schools Act, 1890 (Manitoba statute), which is one of the statutes complained of by the memorialists, was void as offending against subsection 1 of section 22 of the Manitoba Act, whereby the legislature of Manitoba is prohibited from passing any law prejudicially affecting any right or privilege with respect to denominational schools which any class of persons had by law or practice at the union. The two cases were heard together, and it was decided by the Judicial Committee that the Public Schools Act, 1890, did not prejudicially affect any right or privilege with respect to denominational schools which any class of persons had by law or practice in the province at the union, and was consequently *intra vires* and constitutional. The whole of these proceedings, and the said evidence, and the judgment delivered by Lord Macnaughten on behalf of the Judicial Committee, are to be found in the record.

7. The effect of the evidence was fully stated in the judgment of the Privy Council, and the following is a short summary thereof:—

At the time when Manitoba was admitted to the union there was no law or regulation or ordinance with respect to education in force. There were no public schools in the sense of state schools, but there existed throughout the province a number of denominational schools maintained by school fees or voluntary contributions, and conducted according to the tenets of the religious body to which they might belong. These schools were neither supported by grants from the public funds nor were any of them in any way regulated or controlled by any public officials. In 1871, however, the year after admission of Manitoba to the union, a law was passed which established throughout the province a system of denominational education in the common schools, as they were then called. A board of education was formed, which was to be divided into two sections—Protestant and Roman Catholic. Each section was to have under its control and management the discipline of the schools of the section. Each of the twenty-four electoral divisions into which the province had by the Manitoba Act been divided was constituted a school district in the first instance, and there was to be a school in each district. Twelve electoral divisions "comprising mainly a Protestant population" were to be considered Protestant school districts; twelve "comprising mainly a Roman Catholic population" were to be considered Roman Catholic school districts. These schools, none of which could properly be called "separate or dissentient schools," were to be maintained by grants from the public funds, to be divided equally between the Protestant and Roman Catholic schools, and contributions from the people of each school district. Such contributions might be raised by an assessment on the property of the school district, which must have involved in some cases at any rate an assessment on Roman Catholics for the support of a Protestant school, and an assessment on Protestants for the support of a Roman Catholic school.

The laws relating to education were modified from time to time. From the year 1876 to 1890 enactments were in force declaring that in no case should a Protestant

ratepayer be obliged to pay for a Roman Catholic school, or a Roman Catholic ratepayer for a Protestant school, and by an Act passed in 1881 it was provided that the legislative grant should no longer be divided equally between Protestant and Roman Catholic schools, but should be divided between the Protestant and Roman Catholic section of the Board in proportion to the number of children between the ages of 5 and 15 residing in the various Protestant and Roman Catholic school districts.

The system of denominational education was maintained in full vigour until 1890, when the statutes complained of by the memorialists, viz., 53 Vic., chapter 37, and the Public Schools Act, 1890 (Manitoba statutes), were passed. The former established in the place of the Board of Education a Department of Education, and a board consisting of seven members, known as the "Advisory Board."

The Public Schools Act, 1890, repealed all previous legislation relating to public education, and enacted that all Protestant and Roman Catholic school districts should be subject to the provisions of the Act, and that all public schools should be free schools. At the option of the school trustees for each district, religious exercises conducted according to the regulations of the Advisory Board and at the times prescribed by the Act were to be held in the public schools. The religious services were to be entirely nonsectarian, and any pupil whose parent or guardian should so wish was to be dismissed from school before the religious exercise should take place.

The Act then provided for the formation, alteration and union of school districts, for the election of school trustees, and for levying a rate on the taxable property in each school district for school purposes. A portion of the legislative grant for educational purposes was allotted to public schools but no school was to participate in the grant unless it were conducted according to all the provisions of the Act and the regulations of the Department of Education and of the Advisory Board.

8. After the decision in Barrett's and Logan's cases had been given by the Judicial Committee, the memorials before-mentioned were presented to the Governor General in Council by or on behalf of the Roman Catholic minority in Manitoba, alleging that—

(1.) The statutes complained of had deprived the Roman Catholic minority of the rights or privileges of a separate condition as regards education and of organizing their schools under the system of public education in the province which they had previously enjoyed by the Education Acts passed since the union.

(2.) That their schools had been merged with those of Protestant denominations.

(3.) That they are required to contribute through taxation to the support of schools which are called public schools, but are in substance a continuation of the old Protestant schools.

(4.) That the religious exercises in the public schools are not acceptable to them, and praying that the Governor General in Council would, pursuant to the British North America Act, 1867, section 93, subsection 3, and the Manitoba Act, section 22, subsection 3, hear and entertain the memorialists' appeal from the Statutes complained of.

9. The memorialists' contention was—

(1.) That the statutes complained of had prejudicially affected rights and privileges in relation to education which they had acquired since the union.

(2.) That by subsection 2 of section 22 of the Manitoba Act an appeal would lie to the Governor General in Council from any Act of the provincial legislature affecting such rights and privileges, even though the Act were *intra vires* and constitutional.

(3.) That, by virtue of section 2 of the Manitoba Act, subsection 3 of section 93 of the British North America Act, 1867, applied to Manitoba, and that a similar right of appeal was provided by that section.

10. Thereupon the Governor General in Council, pursuant to the authority of the statutes above-mentioned, referred the matter to the Supreme Court of Canada for hearing and consideration, and desired the court to certify to him in Council their opinion on the following questions:

(1.) Is the appeal referred to in the said memorials and petitions and asserted thereby such an appeal as is admissible by subsection 3 of section 93 of the British North America Act, 1867, or by subsection 2 of section 22 of the Manitoba Act, 33 Vic. (1870), chapter 3, Canada?



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(2.) Are the grounds set forth in the petitions and memorials such as may be the subject of appeal under the authority of the subsections above referred to, or either of them?

(3.) Does the decision of the Judicial Committee of the Privy Council in the cases of *Barrett vs. The City of Winnipeg* and *Logan vs. The City of Winnipeg* dispose of or conclude the application for redress, based on the contention that the rights of the Roman Catholic minority, which accrued to them after the Union under the Statutes of the province, have been interfered with by the two statutes of 1890 complained of in the said petitions and memorials?

(4.) Does subsection 3 of section 93 of the British North America Act, 1867, apply to Manitoba?

(5.) Has His Excellency the Governor General in Council power to make the declarations or remedial orders which are asked for in the said memorials and petitions, assuming the material facts to be as stated therein, or has His Excellency the Governor General in Council any other jurisdiction in the premises?

(6.) Did the Acts of Manitoba relating to education passed prior to the session of 1890 confer on or continue to the minority a "right or privilege in relation to education" within the meaning of subsection 2 of section 22 of the Manitoba Act, or establish a system of separate or dissentient schools within the meaning of subsection 3 of section 93 of the British North America Act, 1867, if the said section 93 be found to be applicable to Manitoba; and, if so, did the two Acts of 1890 complained of, or either of them, affect any right or privilege of the minority in such a manner that an appeal will lie thereunder to the Governor General in Council?

11. The case was argued before the Supreme Court on the 17th October, 1893, by counsel on behalf of the appellants and other Roman Catholic inhabitants of Manitoba. Counsel for Manitoba appeared but did not desire to address the court, and at the request of the court Mr. Robinson, Q.C., argued the case as to the interest of Manitoba.

12. After such hearing and consideration the said judges certified to the Governor General in Council, for his information, their opinion on the questions so referred to the court, with their reasons therefor.

To the first question: Strong, C. J., Taschereau, J., and Gwynne, J., gave a negative answer; and Fournier, J., and King, J., gave an affirmative answer.

To the second question: Strong, C. J., Taschereau, J., and Gwynne, J., gave a negative answer; and Fournier, J., and King, J., gave an affirmative answer.

To the third question: Strong, C. J., Fournier, J., and King, J., gave a negative answer; and Taschereau, J., and Gwynne, J., gave an affirmative answer.

To the fourth question: Strong, C. J., Taschereau, J., and Gwynne, J., gave a negative answer; and Fournier, J., and King, J., gave an affirmative answer.

To the fifth question: Strong, C. J., Taschereau, J., and Gwynne, J., gave a negative answer; and Fournier, J., and King, J., gave an affirmative answer.

To the sixth question: Strong, C. J., and Taschereau, J., gave a negative answer; and Fournier, J., and King, J., gave an affirmative answer; and Gwynne, J., answered: "The Acts of 1890 do not, nor does either of them, affect any right or privilege of a minority in relation to education within the meaning of subsection 2 of section 22 of the Manitoba Act in such manner that an appeal will lie thereunder to the Governor General in Council."

The majority of the court were therefore of opinion that no appeal would lie to the Governor General in Council from the statutes complained of.

13. The appellants thereupon, on behalf of themselves and the rest of the Roman Catholic minority in Manitoba, presented a petition to the Queen in Council for special leave to appeal from this decision of the Supreme Court, and such special leave was granted upon terms which have been complied with.

14. The respondent submits that the opinions which the majority of the judges of the Supreme Court gave upon the questions submitted to them are correct for the following, amongst other

## REASONS.

1. Because the provisions of section 22 of the Manitoba Act were intended to define completely the power of the legislature of the province to make laws in relation to education, and the provisions of section 93 of the British North America Act do not in any way limit, or extend, or affect the power of the legislature of the province in that behalf.

2. Because the provisions of subsection 3 of section 93 of the British North America Act, 1867, are varied by the provisions of subsection 2 of section 22 of the Manitoba Act, and are not therefore by virtue of section 2 of the Manitoba Act applicable to Manitoba.

3. Because, assuming all the provisions of subsection 3 of section 93 of the British North America Act to apply to Manitoba, no appeal lies under that subsection from the statutes complained of, the only appeal being from an "Act or decision of any provincial authority," and a statute passed by the legislature of the province is not an Act or decision of any provincial authority within the meaning of that section.

4. Because, assuming all the provisions of sub-section 3 of section 93 of the British North America Act to apply to Manitoba, there is not and never has been a system of separate or dissentient schools established by law in Manitoba.

5. Because, under the provisions of section 22 of the Manitoba Act, an appeal to the Governor General in Council can lie only when rights or privileges existing by law or practice at the union have been affected—and the decision in Barrett's and Logan's cases precludes the appellants from saying that any such rights or privileges have been affected by the statutes complained of.

6. Because, even if the rights and privileges mentioned in section 22 included rights and privileges created since the union, the statutes complained of have not affected any right or privilege of the Roman Catholic minority in relation to education established by law or practice since that time.

7. Because, if the appeal contended for by the appellants lies, the legislature of Manitoba would be deprived of the right, inherent in all legislatures, of repealing its own laws, and the legislature, having once passed a statute giving a right or privilege to any denomination, could never repeal or alter that statute.

8. Because the appellants' contention ascribes to the Governor General in Council, and the Parliament of Canada, a peculiar and arbitrary jurisdiction to review and rescind, according to their discretion, and without any reference to the constitutional rights of the province of Manitoba *intra vires* and constitutional laws passed by the legislature of Manitoba.

9. Because the appellants' contention reduces the exclusive right of the legislature of Manitoba to make laws in relation to education in and for the province of Manitoba, conferred on it by positive enactment, to a nullity.

HERBERT H. COZENS-HARDY.  
R. M. BRAY.

# Manitoba School Case.

## JUDICIAL COMMITTEE OF THE PRIVY COUNCIL,

COUNCIL CHAMBER, WHITEHALL.

*Present :*

The Right Hon. The LORD CHANCELLOR.

The Right Hon. LORD WATSON.

The Right Hon. LORD MACNAGHTEN.

The Right Hon. LORD SHAND.

*In the Matter of certain Statutes of the Province of Manitoba, relating to Education.*

BETWEEN

GERALD F. BROPHY & Others

*Appellants.*

AND

THE ATTORNEY-GENERAL OF MANITOBA.

*Respondent.*

*On Appeal from the Supreme Court of Canada.*

Counsel for the appellants, Mr. EDWARD BLAKE, Q.C., M.P., AND Mr. JOHN S. EWART, Q.C.

Solicitors for the appellants, Messrs. BOMPAS, BISCHOFF, DODGSON, COXE AND BOMPAS.

Counsel for the respondent, Mr. COZENS-HARDY, Q.C., M.P., Mr. HALDANE, Q.C., M.P., and Mr. REGINALD BRAY.

Solicitors for the respondent, Messrs. FRESHFIELDS AND WILLIAMS.

FIRST DAY.—*Tuesday, December 11th, 1894.*

*Mr. Edward Blake, Q.C.:* My Lords, I appear with my learned friend, Mr. Ewart, of the Manitoba Bar, for the appellants in this case. The case is, so to speak, the complement of a case already before your Lordships arising under another form, and with reference to other parts of the section of the British North America Act and of the Manitoba Act which are relevant to the subject of education and the rights of religious minorities in respect to education in the different provinces of Canada. This particular case comes before your Lordships thus : As your Lordships are aware, besides providing a certain restriction upon the powers of provinces generally in the first instance, and by the Manitoba Act upon the powers of that province to legislate in respect of education, an appeal under certain conditions, in certain circumstances against Acts of the legislature or decisions of provincial authorities is granted to the Governor General in Council. Such an appeal was taken, and was pending in a sense, that is to say, it had been presented at the time the former Manitoba school case, *Winnipeg vs. Barrett*, was before your Lordships, but its consideration by the tribunal which the law had created for the purpose of dealing with it had been deferred until the decision in *Winnipeg vs. Barrett*, and it was so deferred upon the express ground that the decision in *Winnipeg vs. Barrett* might render any consideration of that appeal unnecessary, and that therefore the time for dealing with

it would not arise until after that decision had been reached. There were various memorials or petitions making this appeal sent to His Excellency the Governor General in Council. Those which had been before him were supplemented in the end by a further memorial, which is the memorial of Brophy and others, the memorial in respect of which more particularly this appeal is brought.

Perhaps I may most conveniently introduce to your Lordships the considerations of the case by reading a paper, although I am glad to believe that the very full discussion which the former case has received has rendered it not necessary that I should enter so fully into many of the particulars as it was incumbent upon counsel to do on that occasion; yet this document to which I am about to refer your Lordships states succinctly—and I shall read only some extracts from it—what the condition of the case was upon which the Governor in Council acted, so far as he did act. At page 8 of the case it begins. It is a report of a committee of the Privy Council approving a report of a sub-committee of that council, thus making it a minute of the Privy Council of Canada; and the report of the sub-committee is of course what is material. That sub-committee's report states that certain memorials addressed to the Governor in Council had been referred to them, and it gives an account, which I do not know that it is necessary now to read in detail, as to what these earlier memorials were. Then at about the middle of the tenth page:—

"The petition of the 'Congress' then sets forth the minute of council, approved by Your Excellency on the 4th April, 1891, adopting a report of the Minister of Justice, which set out the scope and effect of the legislation complained of, and also the provisions of the Manitoba Act with reference to education. That report stated that a question had arisen as to the validity and effect of the two statutes of 1890, referred to as the subject of the appeal, and intimated that those statutes would probably be held to be *ultra vires* of the legislature of Manitoba if they were found to have prejudicially affected 'any right or privilege with respect to denominational schools which any class of persons had, by law or practice, in the province, at the union.' The report suggested that questions of fact seemed to be raised by the petitions, which were then under consideration, as to the practice in Manitoba with regard to schools, at the time of the union, and also questions of law as to whether the state of facts then existing constituted a 'right or privilege' of the Roman Catholics, within the meaning of the saving clauses in the Manitoba Act, and as to whether the Acts complained of (of 1890) had 'prejudicially affected' such 'right or privilege.' The report set forth that these were obviously questions to be decided by a legal tribunal, before the appeal asserted by the petitioners could be taken up and dealt with, and that if the allegations of the petitioners and their contentions as to the law, were well founded, there would be no occasion for Your Excellency to entertain or to act upon the appeal, as the courts would decide the Act to be *ultra vires*. The report and the minute adopting it were clearly based on the view that consideration of the complaints and appeal of the Roman Catholic minority, as set forth in the petitions, should be deferred until the legal controversy should be determined, as it would then be ascertained whether the appellants should find it necessary to press for consideration of their application for redress under the saving clauses of the British North America Act and the Manitoba Act, which seemed, by their view of the law, to provide for protection of the rights of a minority against legislation (within the competence of the legislature), which might interfere with rights which had been conferred on the minority, *after the union*."

That is a statement of the general nature as understood at the earlier period by His Excellency in Council, of the character of the application for redress:—

"The memorial of the 'Congress' goes on to state that the Judicial Committee of the Privy Council, in England, has upheld the validity of the Acts complained of and the 'Memorial' asserts that the time has now come for Your Excellency to consider the petitions which have been presented by and on behalf of the Roman Catholics of Manitoba for redress under subsections 2 and 3 of section 22 of the Manitoba Act.

"There was also referred to the sub-committee a memorial from the Archbishop of Saint Boniface, complaining of the two Acts of 1890, before mentioned, and calling attention to former petitions on the same subject, from members of the Roman Catholic

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minority in the province. His Grace made reference, in this memorial, to assurances which were given by one of Your Excellency's predecessors before the passage of the Manitoba Act, to redress all well founded grievances and to respect the civil and religious rights and privileges of the people of the Red River Territory. His Grace then prayed that your Excellency should entertain the appeal of the Roman Catholics of Manitoba and might consider the same, and might make such directions for the hearing and consideration of the appeal as might be thought proper and also give directions for the relief of the Roman Catholics of Manitoba.

"The sub-committee also had before them a memorandum made by the 'Conservative League' of Montreal remonstrating against the (alleged) unfairness of the Acts of 1890, before referred to.

"Soon after the reference was made to the sub-committee of the memorial of the 'National Congress' and of the other memorials just referred to, intimation was conveyed to the sub-committee, by Mr. John S. Ewart, counsel for the Roman Catholic minority in Manitoba, that, in his opinion, it was desirable that a further memorial, on behalf of that minority, should be presented, before the pending application should be dealt with, and action on the part of the sub-committee was therefore delayed until the further petition should come in.

"Late in November this supplementary memorial was received and referred to the sub-committee. It is signed by the archbishop of Saint Boniface, and by the president of the 'National Congress,' the mayor of Saint Boniface, and about 137 others, and is presented in the name of the 'members of the Roman Catholic Church resident in the province of Manitoba.'

"Its allegations are very similar to those hereinbefore recited, as being contained in the memorial of the congress, but there is a further contention that the two Acts of the Legislative Assembly of Manitoba, passed in 1890, on the subject of education, were 'subversive of the rights and privileges of the Roman Catholic minority provided for by the statutes of Manitoba, prior to the passing of the said Acts of 1890, thereby violating both the British North America Act and the Manitoba Act.'

"This last mentioned memorial urged :—

"(1.) That Your Excellency might entertain the appeal and give directions for its proper consideration.

"(2.) That Your Excellency should declare that the two Acts of 1890 (chapters 37 and 38), do prejudicially affect the rights and privileges of the minority, with regard to denominational schools, which they had by law or practice, in the province, at the union.

"(3.) That it may be declared that the said Acts affect the rights and privileges of Roman Catholics in relation to education."

Those are the two propositions which the memorials set up, one which was in effect stated by the Canadian Privy Council to be an attempt to rediscuss the question which your lordships had disposed of, the second that which is practically now before your lordships that it may be declared that the Acts affect the rights and privileges of Roman Catholics in relation to education.

The Lord CHANCELLOR.—It is not before us what should be declared, is it?

Mr. BLAKE.—No, what is before your Lordships is whether there is a case for appeal.

The Lord CHANCELLOR.—What is before us is the functions of the Governor General.

Mr. BLAKE.—Yes, and not the method in which he shall exercise them—not the discretion which he shall use but, whether a case has arisen on these facts on which he has jurisdiction to intervene? That is all that is before your Lordships.

Lord SHAND.—Is there any distinction between 2 and 3?

Mr. BLAKE.—Doubtless a most vital distinction.

Lord SHAND.—Is "the rights and privileges of the minority" different from "the rights and privileges of Roman Catholics?"

Mr. BLAKE.—No, not in that respect. The distinction is this: You see the last words of 2 are "which they had by law or practice in the province at the union." What we have now to deal with is rights and privileges which they allege they acquired by post union legislation, which rights and privileges have been interfered with by still later legislation.

LORD SHAND.—Then article 2 refers to at the union, and article 3 post union.

MR. BLAKE.—Yes. Article 2, your lordships will find is practically precluded in advance from discussion. The submission is a submission of the second and not of the first position. Of course, that is a very brief statement of article 3, but the substance is what I have stated. The prayer of the last memorial is :—

“That a re-enactment may be ordered by your Excellency of the statutes in force in Manitoba, prior to these Acts of 1890, in so far at least as may be necessary to secure for Roman Catholics in the province the right to build, maintain, &c., their schools in the manner provided by such statutes, and to secure to them their proportionate share of any grant made out of public funds of the province for education, or to relieve such members of the Roman Catholic Church as contribute to such Roman Catholic schools from payment or contribution to the support of any other schools; or that these Acts of 1890 should be so amended as to effect that purpose.”

Then follows a general prayer for relief. Then the report of the sub-committee goes on to deal with these memorials, saying that they will comment only on the last one, as it embraces all and a little more than the others. They say :

“As to the request which the petitioners make in the second paragraph of their prayer, viz., ‘That it may be declared that the said Acts (53 Vic., 37 and 38) do prejudicially affect the rights and privileges with regard to denominational schools which the Roman Catholics had by law or practice in the province of Manitoba, at the time of the union,’ the sub-committee are of opinion that the judgment of the Judicial Committee of the Privy Council is conclusive as to the rights with regard to denominational schools which the Roman Catholics had at the time of the union, and as to the bearing thereon of the statutes complained of, and your Excellency is not therefore, in the opinion of the sub-committee, properly called upon to hear an appeal based on those grounds.”

LORD SHAND.—What was that sub-committee?

MR. BLAKE.—It was a sub-committee of the Privy Council of the Dominion to which this question was referred.

LORD SHAND.—By His Excellency?

MR. BLAKE.—Yes, by His Excellency in Council, which reported to the full council, and the full council adopted this report, so that it now stands as the report of the Privy Council of Canada approved by the governor. It has the virtue not merely of the report of a sub-committee, but of a minute in council of the Government of Canada.

“That judgment is as binding on Your Excellency as it is on any of the parties to the litigation, and therefore, if redress is sought on account of the state of affairs existing in the province at the time of the union, it must be sought elsewhere and by other means than by way of appeal under the sections of the British North America Act and of the Manitoba Act which are relied on by the Petitioners as sustaining this Appeal. The two Acts of 1890 which are complained of must, according to the opinion of the sub-committee, be regarded as within the powers of the legislature of Manitoba ” (that was following your Lordships’ decision), “but it remains to be considered whether the appeal should be entertained and heard as an appeal against statutes which are alleged to have encroached on rights and privileges with regard to denominational schools which were acquired by any class of persons in Manitoba, not at the time of the union, but after the union.

“The sub-committee were addressed by counsel for the petitioners as to the right to have the appeal heard, and from his argument, as well as from the documents, it would seem that the following are the grounds of the appeal. A complete system of separate and denominational schools was, it is alleged, established by statutes of Manitoba in 1871, and by a series of subsequent acts. That system was in operation until the two Acts of 1890 (chapters 37 and 38) were passed. The 93rd section of the British North America Act, in conferring power on the provincial legislatures exclusively to make laws in relation to education, imposed on that power certain restrictions, one of which was (subsection 1) to preserve the right with respect to denominational schools which any class of persons had by law in the province at the union.”

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LORD SHAND.—What is the date of the British North America Act?

MR. BLAKE.—1867. As to this restriction, it seems to impose a condition on the validity of any Act relating to education, and the sub-committee have already observed that no question it seems to them can arise since the decision of the Judicial Committee of the Privy Council. The third sub-section, however, is as follows: "Where in any province a system of separate or dissentient schools exists by law at the union, or is thereafter established by the legislature of the province, an appeal shall lie to the Governor General in Council from any Act or decision of any provincial authority affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to education." The Manitoba Act passed in 1870 by which the province of Manitoba was constituted, contains the following provisions, as regards that province; by section 22 the power is conferred on the legislature exclusively to make laws in relation to education, but subject to the following restrictions. That enabling power is textually the same as the enabling power in the British North America Act with reference to the province to which it is related. "(1) Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law or practice in the province at the union." That again is textually the same as the first subsection of the British North America Act, with the exception of the introduction of the words "or practice" which formed the main subject of discussion on the former occasion before your Lordships' Board. The restriction, the sub-committee again observe, has been dealt with by the judgment of Judicial Committee of the Privy Council. Then follows: "(2) An appeal shall lie to the Governor General in Council from any act or decision of the legislature of the province, or of any provincial authority, affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to education." It will be observed that the restriction contained in subsection 2 is not identical with the restriction of subsection 3 of the 93rd section of the British North America Act, and questions are suggested, in view of this difference, as to whether subsection 3 of section 93 of the British North America Act applies to Manitoba, and if not, whether subsection 2 of section 22 of the Manitoba Act is sufficient to sustain the case of the appellants, or in other words, whether in regard to Manitoba the minority has the same protection against laws which the legislature of the province has power to pass, as the minorities in other provinces have under the subsection before quoted from the British North America Act, as to separate or denominational schools established after the union.

THE LORD CHANCELLOR.—I do not quite follow. Are the Manitoba words narrower than the British North America Act?

MR. BLAKE.—We hold them to be wider.

THE LORD CHANCELLOR.—The suggestion here is that they are narrower.

MR. BLAKE.—They say the question arises whether they be narrower or not.

LORD SHAND.—They say it is not identical with the restriction.

MR. BLAKE.—And if not, whether it is sufficient, or in other words, whether in regard to Manitoba the minority has the same protection as the minorities in other provinces have?

THE LORD CHANCELLOR.—That is why it puzzled me—why they say in other words unless you assume Manitoba legislation gives a more limited protection than the British North America Act.

MR. BLAKE.—That is really the crucial question in this case. That is the question for argument, what is the meaning of that particular section of the Manitoba Act whether it means more, as we contend, or less, as the other side contend?

THE LORD CHANCELLOR.—The British North America Act gives the right of appeal from any Act or decision of any provincial authority. It might be open to question whether that applied to an Act of the legislature—whether "Act" meant statement or enactment. That, of course, is free from any doubt in the Manitoba Act.

MR. BLAKE.—I shall have to trespass very much upon your Lordships' attention with a somewhat minute consideration of both the causes. My points will be cumulative and, I hope, conclusive. At present I thought I would not enter in a fragmentary manner into that discussion.

The Lord CHANCELLOR.—I think the Privy Council say more in other words.

Mr. BLAKE.—This is what the Privy Council meant, I think, and it is absolutely true—if subsection 2 of section 22 is not sufficient to maintain the appeal by reason of its being less potent than subsection 3 of the British North America Act, and if that subsection 3 does not apply, then it is true with regard to Manitoba that the minority has not the same protection that the minorities have in the other provinces. That is the sense I think in which the phrase is used by the Privy Council.

The Lord CHANCELLOR.—Is it certain that you would be right under the British North America Act?

Mr. BLAKE.—Oh, yes, absolutely beyond the slightest doubt according to my conception.

Lord SHAND.—Admittedly so?

Mr. BLAKE.—I do not know that there is anything admitted in this case. I believe we are at dagger's points all through.

Lord SHAND.—When you say “absolutely” it looks as if it ought to be admitted.

Mr. BLAKE.—I agree it ought to be. I think it is very wrong that they do not admit it.

The Lord CHANCELLOR.—Is there any decision upon it which binds them?

Mr. BLAKE.—No, I would say, to adopt a phrase properly challenged a moment ago, that that construction is manifestly right.

“The argument presented by counsel on behalf of the petitioners was that the present appeal comes before your Excellency in Council, not as a request to review the decision of the Judicial Committee of the Privy Council, but as a logical consequence and result of that decision, inasmuch as the remedy now sought is provided by the British North America Act and the Manitoba Act, not as a remedy to the minority against statutes which interfere with the rights which the minority had at the time of the union, but as a remedy against statutes which interfere with rights acquired by the minority after the union.”

Lord SHAND.—I understand you to say those rights were acquired by legislation.

Mr. BLAKE.—Yes, surely there was no other way?

Lord SHAND.—One of the expressions was “by practice.”

Mr. BLAKE.—That was prior to the union. It does not apply to anything *post* union.

“The remedy, therefore, which is sought is against Acts which are *intra vires* of the provincial legislature. His argument is also that the appeal does not ask your Excellency to interfere with any rights or powers of the legislature of Manitoba, inasmuch as the power to legislate on the subject of education has only been conferred on that legislature with the distinct reservation that your Excellency in Council shall have power to make remedial orders against any such legislation which infringes on rights acquired after the union by any Protestant or Roman Catholic minority in relation to separate or dissentient schools. Upon the various questions which arise on these petitions the sub-committee do not feel called upon to express an opinion, and, so far as they are aware, no opinion has been expressed on any previous occasion in this case or any other of a like kind by Your Excellency's government or any other government of Canada. Indeed no application of a parallel character has been made since the establishment of the Dominion. The application comes before your Excellency in a manner differing from applications which are ordinarily made under the constitution to your Excellency in Council. In the opinion of the sub-committee the application is not to be dealt with at present as a matter of a political character or involving political action on the part of Your Excellency's advisers.”

Your Lordships will observe the phrase “at present.” On the preliminary question which is a question whether there are grounds to entertain an appeal the committee thought they were going to act judicially but very properly they added the words “at present” because it is quite obvious that when they enter upon the sphere of action of entertaining an appeal their functions must be political, of expediency and of discretion, just as much as the functions which in the last resort upon their recommendation are assigned to the Parliament of Canada itself, of course a political body. If the recom-



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mendation of His Excellency in Council is not obeyed by the local authorities there devolves upon the parliament of Canada the right to legislate to the extent that is necessary to achieve redress warranted by the recommendation of His Excellency in Council. Both these transactions, the prior substantive transaction of deciding on the action of the Government in Council, and the action of the Parliament in Canada, are of course not judicial but political.

LORD WATSON.—The only effective authority is the Canadian Parliament.

MR. BLAKE.—Yes, the only authority that can do anything; the Governor in Council can recommend only.

LORD WATSON.—The others may be of opinion that you ought to have it, but they cannot give it you.

MR. BLAKE.—No, but they can do that thing without which we cannot get it, because except upon their recommendation the Parliament of Canada has no power.

LORD WATSON.—Except upon that condition, the Parliament of Canada have no jurisdiction.

MR. BLAKE.—They have not. Therefore it is essential to the subject being dealt with by that body, which in the last resort has the power to deal with it, that it should be treated by this tribunal.

LORD SHAND.—Was this sub-committee of a legal character?

MR. BLAKE.—If I remember rightly it included the prime minister, who is the Minister of Justice, and also one or two more lawyers. In point of fact the members of the cabinet of Canada are generally lawyers. I cannot be certain whether the prime minister was a member of it, but there were certainly some lawyers in it.

MR. COZENS-HARDY.—It is stated at page 16.

THE LORD CHANCELLOR.—Sir John Thompson was one. Is that the Sir John Thompson who is prime minister?

MR. BLAKE.—Yes; he was also the Attorney General and Minister of Justice. Mr. Chapleau was a lawyer of some eminence and filled the office of Provincial Secretary. Mr. Bowell had the misfortune not to be of the bar, and Mr. Daly, I think, was a lawyer though not practising.

LORD SHAND.—At line 42 they say,

"If the contention of the petitioners be correct, that such an appeal can be sustained, the inquiry will be rather of a judicial than a political character."

MR. BLAKE.

"The sub-committee have so treated it, in hearing counsel and in permitting their only meeting to be open to the public. It is apparent that several other questions will arise in addition to those which were discussed by counsel at that meeting, and the sub-committee advises that a date be fixed."

Then they proceed to state certain preliminary questions, and these I may as well proceed to state here, because these are substantially the questions which they ultimately decided should be submitted preliminarily, under a Canadian statute, to the Supreme Court for determination after argument, and the judgment upon that case so submitted to them is the judgment which is to be discussed by your Lordships upon this appeal. Among the questions which the sub-committee regard as preliminary, are the following:—

"(1.) Whether this appeal is such an appeal as is contemplated by subsection 3 of section 93 of the British North America Act, or by subsection 2 of section 22 of the Manitoba Act?

"(2.) Whether the grounds set forth in the petitions are such as may be the subject of appeal under either of the subsections above referred to?

"(3.) Whether the decision of the Judicial Committee of the Privy Council in any way bears on the application for redress based on the contention that the rights of the Roman Catholic minority which accrued to them after the union have been interfered with by the two statutes of 1890 before referred to?

"(4.) Whether subsection 3 of section 93 of the British North America Act applies to Manitoba?

"(5.) Whether Your Excellency in Council has power to grant such orders as are asked for by the petitioner, assuming the material facts to be as stated in the petition?"

"(6.) Whether the Acts of Manitoba, passed before the session of 1890, conferred on the minority a 'right or privilege with respect to education,' within the meaning of subsection 2 of section 22 of the Manitoba Act, or established 'a system of separate or dissentient schools,' within the meaning of subsection 3 of section 93 of the British North America Act, and if so, whether the two Acts of 1890, complained of, affect 'the right or privilege' of the minority in such a manner as to warrant the present appeal?"

I do not think those are textually the ultimate questions, but they are substantially the questions. I may say his Lordship, the Chief Justice of the Supreme Court, in delivering judgment upon the case, boiled down the questions.

LORD WATSON.—They were consulted and returned their individual opinions—not in the form of a judgment of the court.

MR. BLAKE.—They declared those opinions to be the opinion of the court. I suppose, perhaps, it might have been more formal if they had found a formal judgment, but substantially we collect them, and we find the result in our case. I read to your Lordships the concise form in which the Chief Justice (and I make no substantial complaint of it) puts the question with which your Lordships have to deal. It is at the bottom of page 165.

LORD WATSON.—Which of those questions did he deal with?

THE LORD CHANCELLOR.—He dealt with them all.

LORD WATSON.—Did he knock them all into one?

MR. BLAKE.—Yes, and I think tolerably successfully. To put it into a concise form, the questions which we are called upon to answer are whether an appeal lies to the Governor General in Council, either under the British North America Act, 1867, or under the Dominion Act, establishing the province of Manitoba, against an Act or Acts of the legislature of Manitoba passed in 1890, whereby certain Acts or parts of Acts of the same Legislature, previously passed, which had conferred certain rights on the Roman Catholic minority in Manitoba in respect of separate or denominational schools were repealed. The question, therefore, is one of novelty, and one of great importance. The position of the minorities, general and local, throughout the country render it one of very widespread interest and importance all over the Dominion. Speaking very roughly, the Roman Catholics form somewhere about two-fifths of the population of the whole Dominion. In the province of Quebec they are in an overwhelming majority, perhaps five-sixths. In the other provinces they are in minorities, roughly speaking, of one-fifth or one sixth, or something of that kind, so they are in a minority everywhere except in Quebec, and in a majority there so overwhelming that the Protestants in that province occupy towards them the same relation of weakness which they occupy of strength in the other provinces of the Dominion, and in the aggregate in the assembly of last resort, before which the ultimate decision of this question is to come, if there be a case for an appeal the Roman Catholics are still in a minority. Under the clause of the Manitoba Act which is the main ingredient of this case, section 22, which unquestionably, as I shall show your Lordships, was designed upon the face of it to give as much and more consideration to the position of the religious minority in that province than had been given or might be argued to have been given by section 93 of the British North America Act, as much at least, and in some particulars more, and in no sense, as I shall argue less, under the construction which has been placed upon that clause it has turned out that the situation of things at the time of the union was not such as to give to the minority the rights which they or some of them hoped they would have obtained by virtue of the first subsection. There remains only practically for consideration whether they have the minor but the not unimportant, and on the contrary, as they estimate it, the invaluable right of appealing to the Governor in Council, a political body it is true, and to the parliament to which that government is responsible, a parliament in which they are in a minority very much smaller than the proportions of the population. Speaking again roughly, my recollection is that the Roman Catholics in the Parliament of Canada are and always have been about one-third of the body. It is to a body overwhelmingly Protestant that the Roman Catholics appeal for redress against acts of the provincial authorities which as they conceive affected the rights and privileges accorded

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to them by the local legislature. It is plain, as appears by the circumstances of the case, by the documents which are before your Lordships, and indeed as appeared and was stated in the judgment which was delivered by this board on the former occasion, that the question is one of deep interest, not only to the province of Manitoba, but also throughout the whole of the Dominion. It is a question, cognate it is true, but entirely distinct from and essentially differing from the question which has been already before the board. It comes up under other clauses. It deals with a different state of things. It proposes the application of altogether a different and a very much more elastic remedy.

LORD SHAND.—Is it anywhere succinctly stated what these privileges are, or have you read anything which shows it?

MR. BLAKE.—I have not read anything yet. I am about to read an authentic document which states them pretty satisfactorily.

THE LORD CHANCELLOR.—Do you say that these provisions relate only to rights secured by legislation subsequent to the union?

MR. BLAKE.—I do.

THE LORD CHANCELLOR.—By legislation?

MR. BLAKE.—I do.

THE LORD CHANCELLOR.—Do you mean by that that when there has been an Act we will say in the direction desired by the Roman Catholic minority that Act can never be repealed?

MR. BLAKE.—No, not at all.

LORD MACNAGHTEN.—It may be the subject of appeal to the governor.

THE LORD CHANCELLOR.—That is what I mean. Though exclusively created by the provincial legislature, the power that created it has not the power to put an end to it.

MR. BLAKE.—Yes, no unqualified power: that will be part of my argument. I deny that the provincial legislature have any unqualified power as to any subject of legislation at all, either to legislate or to repeal legislation; but I say in this case, their power is by the express language of the clause which gives it to them subject to the special restriction.

LORD SHAND.—If the appeal is before the governor, would he be entitled to take political considerations into view.

MR. BLAKE.—Doubtless.

LORD SHAND.—That is what you get into if your appeal is a successful appeal.

MR. BLAKE.—I should say so.

LORD SHAND.—It is not a mere construction. That is out of it. It would be purely political, I suppose?

MR. BLAKE.—It is not out of it. That is one of the reasons we are here. Suppose the case of post union privileges granted and retracted more or less, then the council has to decide, first of all, whether the case comes within the law at all; secondly, whether there has been such a retraction, and then they proceed to decide what they think ought to be done in order to give to the minority substantially the position which has been withdrawn from them.

LORD WATSON.—The very first question to be determined is what, if any privilege was acquired after the union?

LORD SHAND.—Surely if it were not a question of political character to some extent that would be determined by courts of law.

MR. BLAKE.—In my conception after His Excellency in Council has got rid of this preliminary question and by the light that the courts of justice throw upon the construction of the statutes has found that there is a case for entertaining an appeal he proceeds to deal with that *ex necessitate rei* in a political sense, because what is to be done? Counsel is to say to the legislature of Manitoba, we think such and such things should be done in order to restore to the minority the rights which we think they had and which we think they ought to have back again.

THE LORD CHANCELLOR.—All we have to see is what we think the jurisdiction of the Governor General is.

MR. BLAKE.—The question whether upon the whole acting in their political capacity, the Privy Council believes that they ought not to act, or to act in what we may con-

sider a lame and half-hearted way, or to go the whole length of our demand, is no part of the question I have to submit to your Lordships.

Lord WATSON.—If our duty is limited to that, it must also be limited to deciding whether *prima facie* a case has arisen.

Mr. BLAKE.—Perhaps so.

Lord WATSON.—It may be that after full consideration and hearing the grievance out, we may come to be satisfied that there is no real grievance.

Mr. BLAKE.—I ask no more.

Lord WATSON.—I suppose we are not asked to give any such finding or opinion as would tie the Governor General to follow any recommendation of the Canadian Parliament.

Mr. BLAKE.—I do not think your Lordships are. I do not like to make an absolute concession at this time.

Lord WATSON.—I rather took it from your statement that we are in a position in which we ought not to do that.

Mr. BLAKE.—I think your lordships are not bound to go further.

Lord WATSON.—I suppose we are bound to give him advice in this appeal. He has asked nothing else but advice throughout. He has not asked for a political decision, which shall fetter him in any way.

Mr. BLAKE.—It could not be. The law which creates the tribunal for the purpose of giving advice expressly states that in their political capacity they are not bound by that advice.

Lord WATSON.—That is a Canadian statute.

Mr. BLAKE.—Yes.

Lord WATSON.—A Canadian statute which authorized the Governor General to consult the Supreme Court and lays a duty on the judges of the Supreme Court to give advice.

Mr. BLAKE.—Yes.

Lord SHAND.—Is it to be your argument that the legislation of 1890 was *ultra vires* upon this matter?

Mr. BLAKE.—No, that is concluded.

Lord SHAND.—That is concluded even in this question.

Mr. BLAKE.—I agree.

Lord SHAND.—It occurred to me, if that were the kind of question that would be more for a judicial tribunal, but that is concluded by the former decision, even as applicable to the present.

Mr. BLAKE.—Yes.

Lord WATSON.—The Governor General is here asking us to give him our advice in the form of an appeal.

Mr. BLAKE.—The Canadian legislature as far as it could assimilated the finding of the Supreme Court, around which they cast all the guards and checks possible, by providing for counsel, and so on; they as far as they could assimilated that to a decision in an action at law and expressly allude to that question of an appeal to the Board.

Lord SHAND.—What was it in the result that the judges did recommend to the Governor General?

The Lord CHANCELLOR.—It is impossible to say what they recommended till you read the questions and read the answers to each one.

Mr. BLAKE.—By a majority of three to two, but differing in its composition, they answered each question in the negative. That is as far as I can say in one sentence.

Lord WATSON.—For reasons identical, pro and con, or for different reasons?

Mr. BLAKE.—Ah, no. Your Lordships know the Supreme Court. One question which they answered in our favour by this majority, and in respect of which, unfortunately, some of the judges favouring us otherwise were against us, else we should not have been the appellants, on this occasion, was whether the decision of your lordships on the former occasion had concluded the questions against us. On that question we have a negative answer by three to two. The Chief Justice was of that opinion, he

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was against us on the other five questions, but he was with us on that question, and was of opinion that the decision of this board did not affect the question then before the court. That made a majority of three to two in our favour upon that question. Therefore there is upon that no appeal by us now. I will say upon it only a very few words, which I say not so much because I even understand that the proposition is to be seriously disputed, as because it is perhaps needful to clear up from the judgment itself and from the facts of the case what the real thing is which has been decided as contrasted with that which is now up for judgment. I say the point of this question which is submitted to your lordships is substantially the question whether rights or privileges acquired by post union legislation *intra vires*, and afterwards affected by later provincial legislation *intra vires* also, but subject as we contend to this appeal, is subject to the appeal or no. We do not say that this legislation is void, we say only that it is subject to this appeal.

The Lord CHANCELLOR.—The only question before the board before was the validity of these Acts, was it not?

Mr. BLAKE.—The validity of the Acts of 1890; and that validity was to be tested by the condition of things by law or practice as existing at the union. I will run very briefly over the points in support of the proposition that your Lordships have not dealt with adversely, nay, I say as far as the leanings and indication of this board went they were favourable even when the question has not been disposed of.

Lord SHAND.—That is a matter which stands in your favour now.

The Lord CHANCELLOR.—Surely if the question then was the validity of the Act, and if this present argument assumes the validity of the Act, it is clear that this question cannot have been determined by the last case. Perhaps it is a rash thing to say one sees there is a difference of opinion, that I ought not perhaps to have said that, but it strikes one so as a matter of first impression.

Mr. BLAKE.—My learned friend tells me, as I expected, that he does not agree.

Lord SHAND.—It is to be maintained against you that you are precluded by this decision?

Mr. BLAKE.—Yes.

Lord WATSON.—I can quite understand it is to be maintained against you that the principle upon which their lordships proceeded in the former case if it applied in this case ought to be fatal to your argument. I suppose that is the way it is dealt with, not that it was directly matter of decision.

Mr. BLAKE.—I did not suppose that I did not put it in that technical form. I understood my learned friend to mean——

Lord WATSON.—That there were principles or rules laid down in that case which would prejudice you in your argument.

The Lord CHANCELLOR.—I think it is generally convenient not to argue a point which has been decided in your favour. It only makes the argument a great deal longer, without much benefit. We shall hear it from them, and then you will have a reply.

Mr. BLAKE.—Very well, my Lord. Omitting, then, on that statement the consideration of that question, and assuming that the case is absolutely free, it yet devolves on me on one or more points in the argument to allude to passages in the judgment for other reasons. I suppose that these questions, sub-dividing the single proposition, the single phrase in which the Chief Justice of the Supreme Court stated their essence, divide themselves mainly into two, one as to whether subsection 3 of section 93 of the British North America Act has application to Manitoba; I mean direct positive application, for application of the most vital consequence in all other phases of the discussion section 93 necessarily has, but whether it is directly applicable to and is a governing sentence——

The Lord CHANCELLOR.—Did Manitoba come into the Dominion afterwards?

Mr. BLAKE.—Yes, Manitoba came in under its Special Act of 1870. It was created in 1870 out of the Hudson's Bay Territories.

The Lord CHANCELLOR.—This may be a question of controversy or it may not. When a new province came into the Dominion did the British North American Act *ipso facto* apply.

Mr. BLAKE.—Not *ipso facto*. Provinces might come in in various ways. Some provinces come in upon addresses of the Houses and of the provinces to the Queen in Council.

Lord WATSON.—Certain provinces were named in the Act.

Mr. BLAKE.—Yes, there were four. There was provision for the admission of other provinces from time to time. The general machinery was that there should be joint addresses of the Parliament of Canada and of the provinces concerned to the Queen in Council, and those joint addresses being identical stated the terms of the union, and then an Imperial Order in Council was passed bringing the province into the union upon those terms, which terms introduced the clauses of the British North America Act with such slight exceptions or modifications as might be required, the main one being that there were in the British North America Act certain clauses which applied only to one or more, and not to all the provinces, and these might or might not be applied to any province. But this of Manitoba was an exceptional case, because here you had no legislative body, no representative body, in that unorganized community which was about to be induced to assume the status of a province, being at the time nominally, though not more than nominally, under the control of the Canadian Parliament, because your Lordships may remember that the Hudson's Bay Company's territories were assigned over to Canada, that there was a resistance on the part of the population largely upon this question to the entrance of the Canadian officials, that there was a riot (dignified by the name of a rebellion), and that, ultimately, delegates came down, negotiations took place, and the Manitoba Act—the Act in question—was passed. That Manitoba Act had not the character of permanence which the constitutions of the other provinces had, because it was passed by the Parliament of Canada, which might have repealed or changed it, but it was confirmed and made permanent by the Imperial Parliament, and so that province acquired its rights by a title as solid and enduring as the other provinces. What I was saying was that the question might be subdivided into these two questions, the first applicable to subsection 3 of section 93 of the British North America Act.

The Lord CHANCELLOR.—You say that the British North America did not *ipso facto* become applicable because Manitoba became a province. How is it suggested that section 93 of the British North America Act became applicable to Manitoba?

Mr. BLAKE.—In the Act which created the province of Manitoba and which was confirmed, as I have said, the British North America Act is made in a certain general sense and in a certain general way applicable. The question is whether these particular clauses of it are applicable. That is the whole question. I am not going to detain your lordships more than a moment on that question, because I have to address your lordships at great length on other points on which I can do so more usefully. My intention is to rely on the reasons of Mr. Justice Fournier given at page 177, line 29, of the Judgment (beginning with the words "Does subsection 3 of section 93," &c.) as indicating the application of subsection 3.

The Lord CHANCELLOR.—Do you say that this section of the British North America Act is more favourable to you than the section of the Manitoba Act?

Mr. BLAKE.—I do not think so.

The Lord CHANCELLOR.—Supposing it differs, which prevails?

Mr. BLAKE.—The theory was stated in that passage of the judgment to which I have just referred your Lordships. All the sections of the British North America Act are to apply provided they refer to all the provinces except where they are varied by the Act in question. Some of the clauses of section 93 are expressly re-enacted textually by section 22 of the Manitoba Act. Some of the clauses are re-enacted textually with a slight addition as of the words "or practice." I do not suppose it could be seriously contended in such cases that the clauses of the British North America Act were intended to have a vigour of their own because there is an express provision with a slight alteration. As to this particular subsection 3.

The Lord CHANCELLOR.—Does that appear re-enacted?

Mr. BLAKE.—There is another, subsection 2 of the Manitoba Act, which we contend does as much or more but in a different phraseology. Yes.

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LORD SHAND.—If one failed you would fall back on the other.

MR. BLAKE.—Yes, the learned judge suggests that it is in addition to it.

THE LORD CHANCELLOR.—Is it not rather against that that you find some of the subsections textually re-enacted; some with alterations that might be a reason for putting them in? But if you find, whilst some are textually re-enacted there is one not re-enacted, and you find a special enactment which deals with the same subject matter, would not the natural inference be that that was intended to be the substitute for that?

MR. BLAKE.—I have no doubt that is the argument that will be addressed to your Lordships in answer to my argument?

THE LORD CHANCELLOR.—You argue that the Manitoba section is just as good for you as the other?

MR. BLAKE.—I do in a different form. I contend very strongly for that, but I have to proceed when I get a little further on to discuss the clauses of the British North America Act as exhaustively as if they had direct application, even those which I concede have no direct application because of this.—It is perfectly plain that in construing the main Constitutional Act, and this graft on the main Constitutional Act, we must look at both provisions, in order to deal first of all with that which I venture now to say is the basis of the Manitoba clause, and which is, at any rate, in *pari materia* with the Manitoba clause, and I trouble your Lordships with a full discussion upon the clauses of the British North America Act with the less reluctance because the main bulk of everything I have to say on the British North America Act has direct application to the Manitoba Act. It would have to be said even if the British North America Act were not there at all.

LORD SHAND.—Were you going to read that passage at page 177?

MR. BLAKE.—I will read it if your Lordship wishes.

LORD SHAND.—Not unless you intend to.

MR. BLAKE.—I was anxious to open my argument as soon as I could, knowing that under any circumstances I shall be taking up a great deal of your Lordships' time.

LORD SHAND.—This very much embraces the substance of your argument.

MR. BLAKE.—Yes, the substance of what my argument on that subject would be if I had stated it.

LORD WATSON.—A post-acquired legal right or privilege. That is what you say?

MR. BLAKE.—Yes. The clauses of both statutes are to be found in the appellants' case—the clause of the British North America Act at page 2, and the clause of the Manitoba Act at page 3.

MR. COZENS-HARDY. Your Lordships will find them side by side in parallel columns on page 3 of the respondent's case.

MR. BLAKE.—I gave your Lordships the appellants' case towards which I have a natural leaning.

LORD SHAND.—It is a great convenience to have them side by side.

MR. BLAKE.—Yes. Then I will take page 3 of the respondent's case. Now the enabling clause is "the said legislature may exclusively make laws in relation to education, subject and according to the following provisions." That is the clause in both. I am reading from section 93 of the British North America Act and section 22 of the Manitoba Act. They are identical so that the power given to the provinces of Canada originally, and to the province of Manitoba when it was created is "exclusively to make laws in relation to education subject and according to the following provisions." The question is what those provisions are by the British North America Act, and what differences, if any exist in those provisions in the Manitoba Act. I call your lordships' attention to the phrase "in relation to education." That is the widest phrase. It is the enabling phrase. It is the all embracing phrase and the form of it and the use of it, and the circumstances in which it is used here enable me to induce an argument when I come at some I fear distant time to the end of this clause, where your lordships will see the same phrase recurs "in relation to education." This is one of the points of distinction between subsection 1 and subsection 3 in which one of the elements is that "in relation to education" occurs in subsection 3 and in subsection 1 "a privilege with

reference to denominational schools." As we say it is a larger phrase and a different phrase in subsection 3 from subsection 1, and I give a colour and strength and extent to the phrase by showing to your Lordships that it is the phrase which the legislature has adopted, that when it came to give the provincial legislature power to make laws it was "in relation to education."

Lord WATSON.—They had the exclusive power whatever may be its extent.

Mr. BLAKE.—Yes.

Lord SHAND.—What particular force do you get by the words "in relation to education" that do not occur to me on reading them.

Mr. BLAKE.—I ask myself in what sense the phrase was used in that clause? I answer that it is language of the widest character, and that the purposes were of the widest character, and therefore I find that it is a very wide phrase. "In relation to education" does not mean merely elementary schools—it means any subject affecting education at all, and then I find having given that interpretation, the natural interpretation to the language in the place in which it occurs, that the same phrase is used at the end of subsection 3, and I ask your Lordships to regard that circumstance when you are called on to contrast it with, and by my friend on the other side, to assimilate it to the phrase—"With respect to denominational schools" which occurs in subsection 1. I have come a little prematurely into that, but the contention on the other side is that subsection 3 has a relation to or connection with subsection 1, and, when I get to subsection 3, I shall ask your Lordships to recur to the fact I have now stated.

The Lord CHANCELLOR.—It cannot apply only to that, obviously, because subsection 1 is to define the rights and privileges at the union, and subsection 3 certainly extends to things established afterwards.

Mr. BLAKE.—There are at least four marks of distinction of which this is one which I am only illustrating at this moment, because in going through the clauses in their order the phrase "in relation to education" occurred. But that power, all embracing though it is as to education, is yet, "subject and according to provisions," and your Lordships have already held that the effect of those words is that if the provisions which are found later are contravened by the law, the law is void. The law is void and beyond the power of the legislature to the extent at any rate of the contravention, and perhaps beyond, because it may be impossible to separate the contravening part from the other, and to give effect to the statute. That is one of the points decided by the board in the course of the discussion of the other cases.

Then, my Lords, I take subsection 1 of the British North America Act, which differs only from subsection 1 of the Manitoba Act by the addition of the words "or practice," and I ask your Lordship to refer to that phrase "with reference to denominational schools," which is the phrase which is contrasted with, or rather is alleged to be the same as "in relation to education" in the third subsection. Now, the Imperial Parliament when they were enacting the British North America Act, were conjoining four provinces, Nova Scotia, New Brunswick, and the two provinces, newly created, or so to speak, restored provinces of Ontario and Quebec. In Nova Scotia and New Brunswick there were no pre-union rights or privileges, unless it be alleged that the right of using the Douay version for the Bible teaching in certain schools was a privilege in the province of New Brunswick; but that is not material to the present discussion as far as I can see. So that Nova Scotia and New Brunswick are to be put out of sight as being dealt with by subsection 1. In Ontario the general system of education was non-denominational, partly no doubt because there the overwhelming majority of the people were Protestants of different sects; and in order that they should unite in a public school system, it was an element of necessity that the general plan should be non-denominational. There were there certain slight religious exercises subject to a conscience clause; but while the general system was thus denominational—there were certain rights given to the Roman Catholic denomination under the Ontario Separate Schools Act. The Roman Catholic denomination had the right to set up separate schools, and these separate schools when set up were under the control of the public authorities.



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Lord WATSON.—Upper Canada and Quebec had legislation of their own, had they, at that time ?

Mr. BLAKE.—Doubtless.

Lord WATSON.—They were brought in by subsection 2 of 93. This right is made reciprocal in these two provinces. Whatever rights the Catholics had in Upper Canada the Protestants had in Quebec.

Mr. BLAKE.—The Protestants and Roman Catholics were protected together in Quebec.

Lord WATSON.—The Protestants had in Quebec the same rights of minorities.

Mr. BLAKE.—But there the Roman Catholic local minorities were given the same rights by subsection 2. But I was endeavouring to explain what the state of things had been in Ontario.

Lord WATSON.—There was no provision made with respect to reciprocal equality in any other province.

Mr. BLAKE.—No, I do not think it ever was the intent of the British North America Act to alter the conditions in the other provinces. Ontario and Quebec were in a different position. They were being separated. They were together up to the moment of this Act.

Lord WATSON.—They were one province.

Mr. BLAKE.—Yes.

Lord WATSON.—And had been for nearly 40 years in union.

Mr. BLAKE.—For 25 years or so—a quarter of a century—from 1841 to 1867. It is a long while now since the British North America Act was passed. The system which (so far as the rights which the minorities, or the rights which any class of persons at the union had) was crystallized in Ontario, was a system under which, speaking generally, there was non-denominational education, with a right to the Roman Catholics to set up separate schools.

Lord SHAND.—With the right to any denomination to set up separate schools ?

Mr. BLAKE.—No, I think not.

Lord SHAND.—I think Lord Watson said that whatever rights the Roman Catholics had the Protestants had the same.

Mr. BLAKE.—That was in the province of Quebec.

Lord SHAND.—I thought you were talking of Ontario.

Mr. BLAKE.—Not at that point.

Lord SHAND.—I heard that observation made and I thought you assented to it.

Mr. BLAKE.—No, my lord. His lordship perhaps overlooked one sentence as to Quebec.

Lord SHAND.—I am speaking of Ontario alone.

Mr. BLAKE.—Yes, that is what I am trying to do. There was a certain condition, namely, where the teacher in a public school was a Roman Catholic in which case some limited right was given to the Protestants in the province of Ontario. It is not worth speaking about. The Protestants were dominant. If the sects could agree among themselves, they were five to one, and the general system they had engrafted on themselves was non-denominational.

Lord SHAND.—If that was so, surely they had the same privilege as the Roman Catholics of setting up any schools they liked.

Mr. BLAKE.—No, they did not want it. They did not take it. They might have taken it, of course.

Lord SHAND.—That is all I meant. They had the same power.

Mr. BLAKE.—No, my lord. The legislature could have given it to them, but it did not. They had not the power. They were dominant in the sense that they were five to one, and returned five to one of the members, and directed the course of legislation, but the legislation was not that at all.

Lord SHAND.—They were content, were they ?

Mr. BLAKE.—They consented to and preferred the system of non-denominational education, subject to this right to the Roman Catholic denomination, to which some of the minority, and which was indeed passed in the common legislature by the influence

of Quebec, objected, and that was the system engrafted on Ontario, and crystallized at the time of confederation. In Quebec the majority was of a different type. The majority belonged to one denomination instead of twenty or thirty as in Ontario, though I am glad to say they are reduced to five or six now, of any account. The preponderating majority in Quebec was Roman Catholic—and these of one denomination. The general system there, as one would expect from the fact of their being an overwhelming majority of one denomination, and of that particular denomination, although called a public school system, was denominational. But there was also the right to the Protestants to set up their schools, but the population was so circumstanced that there were Roman Catholic minorities in certain places and Protestant minorities in others, and any number of persons, however, different from the faith of the majority had the right to set up what were called dissentient schools in their own locality, and when they set them up they became public schools, of their order. They became public schools subject to the public regulations, getting their share of the public grants, and in either case in each province the ratepayer being bound to contribute to the school of his own faith, was free from contributing to the schools of the other faith. The Roman Catholic in Ontario had the right to adopt the undenominational form, and become a subscriber to the public schools. That was the state of things there. So that you find in effect the population of these two provinces, where alone there were pre-union rights, divided in practice with reference to the schools of the country, organised by the law of the country into two bodies—the Roman Catholic denomination and the aggregate of the Protestant sects or denominations. I contend that “denominational schools,” when it appears on this first subsection, therefore, has application to schools, as to the Roman Catholics, of course, of their denomination. In Quebec all the public schools were denominational, just as much as in Ontario all the Roman Catholic schools were separate. In each case they were denominational. I contend that the dissentient schools of Quebec where they were Protestant, and *a fortiori* where they were Roman Catholic (for as I have said there might be Roman Catholic dissentient schools), were also denominational schools within the meaning of this clause; and that, in short, what has been called a monster was more or less set up by the statute. There is a sort of statutory aggregation for the purposes of this section of the body of the Protestants into one body, which is called a denomination, for the purpose of denominational schools. I press most strongly on your Lordships the proposition that, looking at this Act by the light of the existing facts of the school legislation, and the schools, and the rights which all had, you find nothing but the aggregation of the Protestant sects, called for the purpose of this legislation a denomination, and the Roman Catholic another denomination.

LORD SHAND.—I understand you to say that this section has really no operation now and is ineffectual in any way with reference to Nova Scotia and New Brunswick.

MR. BLAKE.—Yes; there were no rights or privileges with respect to denominational schools given by law, and it had no operation at all as to them, and that is a very important circumstance when I come to deal with subsection 3. Subsection 1 had operation only as to Ontario and Quebec and the denominational schools were such as I have described to your Lordships. Of course, my lords, there were negligible and neglected quantities, there was the question of the Unitarians, the question of the Jews, and the question of the Pagans, but the great bulk of the population, those who counted at the polls, I suppose, were dealt with in this way by these statutes. Now that interpretation I have invited your Lordships to give to denominational schools.

THE LORD CHANCELLOR.—I am not sure I see in contrast to what you suggest your interpretation of it. To what is the other interpretation applied?

MR. BLAKE.—The suggestion which has been made, which was strongly pressed upon the Board on the former occasion, and which, as far as I can judge, is to be repeated, is that the necessary effect of the success of an appeal under this section would be to render impossible any system of public national education, because it would involve rights to all the different sects of Protestants to set up separate schools in respect of which they might complain. The answer that I make is that these are rights of minorities only: and I find what the classes of minorities are—that these are not rights of the

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majority ; and the majority is a Protestant majority, and is not to be divided into five or six sects each of whom may be relatively to the whole or to the Protestant population a minority.

The Lord CHANCELLOR.—If the majority is an undenominational majority, all that is to be protected is the denominational-school-desiring minority.

Mr. BLAKE.—Yes, the majority protects itself.

The Lord CHANCELLOR.—And if it is a denominational majority, it is only the undenominational minority who need protection.

Mr. BLAKE.—The privilege which is to be protected is a privilege of the Protestant or Roman Catholic minority of the Queen's subjects. I have the expression Protestant minority—

The Lord CHANCELLOR.—You aggregate them.

Mr. BLAKE.—I aggregate them up here as non-denominational ; I aggregate them down there as Protestants ; and I hold that taking the province of Manitoba where the Protestants are in a majority, there is no right to be protected by an appeal, for the simple reason that that they can protect themselves. They are seven or eight to one, and they can legislate as they please. The question is, whether the weaker should go to the wall to the extent to which the strong could push them there.

That contention as to denominational schools is supported by the fact, I submit, that the separate schools in Ontario are said in subsection 2 to be those of Roman Catholics, while the dissentient schools of Quebec are said to be those of the Queen's Protestant and Roman Catholic subjects. You find the denominational schools of the Roman Catholics called separate schools in Ontario, and you find the dissentient schools, which would be usually Protestant in Quebec, called the schools of the Protestants and the schools of the Catholics.

The Ontario Roman Catholic, where he is in a minority is given a right to establish a separate school, and the Quebec Protestant or Catholic, where he happens to be in a minority, is given a right to establish a dissentient school—dissentient meaning there simply that he dissented from the public schools, which public schools were almost invariably, but not invariably, Roman Catholic schools.

Now, it is necessary to clear away the suggestion formerly advanced that denominational schools, as expounded in these statutes, resemble at all schools such as exist elsewhere under such names.

Lord SHAND.—You said some time ago you would mention what the privileges were which were the subject of discussion. Have you done that ?

Mr. BLAKE.—No.

Lord SHAND.—I should understand all this more if you could say in short what were the privileges you make the subject of contention. If it is a new subject I do not want you to do it, but perhaps you can tell me in a word.

Mr. BLAKE.—Our privileges are not to be mentioned in a word, but I will read to your Lordship a short exposition or statement from the judgment of this Board.

Lord WATSON.—What we decided last year, so far as my understanding went, was this. I understood the Board to determine that a right or privilege with reference to denominational schools in Manitoba, which was asserted to have existed at the period of the Union and to be prejudicially affected by the two statutes, which were said to be *ultra vires*, had no existence in fact or law, that there was no such privilege.

Mr. BLAKE.—I was not about to read that part of the judgment. I was, in answer to Lord Shand, about to read that part of the judgment which describes the state of things created by the post union legislation.

Lord WATSON.—This is subsequent to the union.

Lord SHAND.—I do not want to take you out of the order of your argument.

Mr. BLAKE.—I am very glad to answer your Lordship's question, which is entirely pertinent, but I think perhaps I can give a more distinct statement.

The Lord CHANCELLOR.—What you want to mention is what are the rights and privileges.

Lord SHAND.—That is what I want to know.

Lord WATSON.—What is the privilege ?

The Lord CHANCELLOR.—The privilege you are supporting is the privilege of having the right to things created by the former Act.

Mr. BLAKE.—Yes.

Lord SHAND.—Is that a privilege then of having schools of your own, and not being obliged to pay rates for other schools?

Mr. BLAKE.—That is one of the things and organization and so forth.

Lord SHAND.—I understand now.

Mr. BLAKE.—I will give your Lordship a reference to the history that the Judicial Committee itself gives of it. At page 155, line 13, is the statement.

Lord SHAND.—Then I will read that afterwards.

Mr. BLAKE.—I will also give your Lordships a possibly somewhat briefer statement, which I am able mainly—I shall have a word or two to say upon it—to adopt from the respondents' case, page 4, line 28 down to line 32 on the following page, which gives generally speaking a tolerably correct statement of the condition of things created by the post union schools and afterwards changed by the latest legislation.

Lord SHAND.—I will read this afterwards.

Lord WATSON.—There was no question dealt with in the judgment as to the fact of post union Acts except to consider whether the prejudicially affected privileges existing at the date of the union?

Mr. BLAKE.—I quite agree. That is my argument. It is an argument which your Lordships have kindly relieved me from elaborating. At this moment I was citing the judgment only as an authentic history of that state of facts which Lord Shand wanted to be informed upon.

Lord SHAND.—I have got what I wanted.

Lord WATSON.—The first Act was an Act in 1871 after the union, and it was said that that Act encroached upon these privileges.

Mr. BLAKE.—No, my Lord. We should be only too pleased to get that.

Lord MACNAGHTEN.—You would like to go back to that?

Mr. BLAKE.—Yes. We did not complain of it at any time. We always approved of it, and would like it to be there still. What I was saying was, and the only additional observation I have to make upon this subject of denominational schools is that it is not to be understood for a moment that as meant here it includes private schools or schools which are other than state schools. The denominational schools are state schools. They are, in a sense, public schools. They are schools supported partly by public money. They are schools subject to regulation, subject to inspection, subject to orders, obliged to keep up to a standard, and supported by rates and so forth. They are a machinery by which the public and political organization provides for the education of the mass of the whole people according, as we say, to the wishes of every part of the community. That is the sense in which you find denominational schools used in the connection in which we find it in this Act. Now I pass to subsection 3, which is, from whatever point of view you look at it, whether as in force or whether as throwing light upon subsection 2 of the Manitoba Act, the most important of the sections, I find there a statement of a system of separate or dissentient schools as one of the conditions on which an appeal shall lie. "Where in any province a system of separate or dissentient schools exists by law at the union or is thereafter established by the Legislature of the province." I ask your Lordships to observe that the meanings of these two words "separate or dissentient" are shown by reference to the Ontario and Quebec systems I have already briefly brought before your Lordships' attention. But they are also shown by the statute, because if your Lordship refers to subsection 2 you find "separate" schools described and "dissentient" schools described. The separate schools are the schools of the Roman Catholic subjects in Upper Canada, and the dissentient schools are the schools of the Queen's Protestant and Roman Catholic subjects in Quebec, and therefore "a system of separate or dissentient schools" is merely a way of referring to the systems which were already in existence in the provinces of Ontario and Quebec. The words have a technical sense which is sufficiently indicated by the section. Of course I do not contend—but on the contrary I contend strongly the other way—that

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there is the slightest need that any system of separate or of dissentient schools which may be created, after the union under this Act or the Manitoba Act shall conform exactly to either of the systems here, because they differ. In Ontario the system is different from Quebec, at least in its relation to the schools of the majority. In Ontario you have a system in which the schools of the majority are non-denominational. In Quebec you have a system in which the schools of the majority are denominational. But in each case you have a provision for the separate instruction of the religious minority. You may therefore have a system absolutely national and common and non-denominational, in theory at any rate for the majority, as is the case in Ontario combined with separate schools for the minority, or you may have a denominational system for the majority, and separate schools for the minority—one or the other—and in either case you come within the meaning of those words. It is not necessary then that the majority system should be at all denominational. It may be one or the other, and the existence of the rights of the minorities, though they involve these separate dissentient schools is entirely consistent with the existence of a general and all embracing system of education for the people. In either case the minorities have, and minorities similarly circumstanced elsewhere are intended to have protection for their rights.

[Adjourned to to-morrow at half-past 10 o'clock,]

SECOND DAY.—Wednesday, December 12, 1894.

Mr. BLAKE.—My Lords, having reached those sections of both the Acts which bear directly, and which are really the sections in respect of which the rights set up in this appeal, both those we claim under the British North America Act, and those we claim under the Manitoba Act, are, as we allege, protected, it may, perhaps, be convenient if before dealing further with subsection 3 of the British North America Act and subsection 2 of the Manitoba Act, I should briefly refer to the state of facts upon which we allege these sections do apply, and I would refer your lordships to the summary given by Mr. Justice Fournier, at page 176 of the position which by the post union legislation the Catholics occupied. It is very brief, "By referring to the legislation from the date of the union till 1890, it is evident that the Catholics enjoyed the immunity of being taxed for other schools than their own, the right of organization, the right of self government in this school matter, the right of taxation of their own people, the right of sharing in government grants for education, and many other rights under the statute of a most material kind. All these rights were swept away by the Acts of 1890, as well as the properties they had acquired under these Acts, with their taxes and their share of the public grants for education. Could the prejudice caused by the Acts of 1890 be greater than it has been?" I may say that I think no one of the judges in the court below has doubted that the post union rights have been affected, the doubt has been whether, post union rights being affected, the remedy applied. Mr. Justice Taschereau was the only judge who expressed a doubt, and that doubt, as far as I can see, is based upon what I may be permitted to call a fundamental error in his judgment, that this case had been concluded by the decision of this board.

Then I feel it right to go a little more into detail upon this subject so that the case may be presented to your lordships, and for that purpose I propose now to read the summary of the position which was given by the judgment on the former case. That is at page 155.

Lord SHAND.—What does he mean by "rights of taxation" in that passage? That would be voluntary, would it not?

Mr. BLAKE.—No, voluntary is subscription.

Lord WATSON.—We will come to the Acts by and by.

Mr. BLAKE.—Yes, that is a brief summary, and is open to the objections to which a brief summary is open, but I am going to enlarge it. This is the statement which your Lordships' board make at page 155, line 13:—

"Manitoba having been constituted a province of the Dominion in 1870, the provincial legislature lost no time in dealing with the question of education. In 1871, a law was passed which established a system of denominational education in the common schools as they were then called."

The Lord CHANCELLOR.—Before the union was there no educational provision of any sort?

Mr. BLAKE.—No, that was what your lordships decided. There was no legislature, and there was an absolutely voluntary system by which the adherents of the different churches had, no doubt, under the guidance of their spiritual pastors, done what they pleased, and done what they could. That was all, and your Lordships held that that "all" had not been infringed upon by this. That being the condition, the ground was absolutely clear and free for what was done by post union legislation. In 1870 the power to legislate was given by the creation of the province. Your Lordships' judgment continues:—

"In 1871 a law was passed which established a system of denominational education in the common schools, as they were then called. A Board of Education was formed, which was to be divided into two sections, Protestant and Roman Catholic. Each section was to have under its control and management the discipline of the schools of the section. Under the Manitoba Act, the province had been divided into twenty-four electoral divisions, for the purpose of electing members to serve in the legislative assembly. By the Act of 1871 each electoral division was constituted a school district, in the first instance twelve electoral divisions, 'comprising mainly' a Protestant population, were to be considered Protestant school districts; twelve 'comprising mainly a Roman Catholic population,' were to be considered Roman Catholic school districts. Without the special sanction of the section there was not to be more than one school in any school district. The male inhabitants of each school district, assembled at an annual meeting, were to decide in what manner they should raise their contributions towards the support of the school, in addition to what was derived from public funds. It is perhaps not out of place to observe that one of the modes prescribed was 'assessment on the property of the school district,' which must have involved in some cases, at any rate, an assessment on Roman Catholics for the support of a Protestant school, and an assessment on Protestants for the support of a Roman Catholic school. In the event of an assessment there was no provision for exemption, except in the case of the father or guardian of a school child, a Protestant in a Roman Catholic school district, or a Roman Catholic in a Protestant school district—who might escape by sending the child to the school of the nearest district of the other section and contributing to it an amount equal to what he would have paid if he had belonged to that district. The laws relating to education were modified from time to time, but the system of denominational education was maintained in full vigour until 1890. An Act passed in 1881, following an Act of 1875, provided among other things, that the establishment of a school district of one denomination should not prevent the establishment of a school district of the other denomination in the same place, and that a Protestant and a Roman Catholic district might include the same territory in whole or in part. From the year 1876 until 1890 enactments were in force declaring that in no case should a Protestant ratepayer be obliged to pay for a Roman Catholic school, or a Roman Catholic ratepayer for a Protestant school."

I pause there because that is the end of your Lordships' description of the system. I pause there just to make a general observation, without enlarging upon the description further. Your Lordships will see that there the legislature was dealing with a state of facts which very soon changed as to the geographical distribution, and the amount of the population originally there was a very small population almost equal in numbers, and it so happened that the population was almost in blocks of one religion or the other, not absolutely exclusively so, but so for practical purposes. Therefore they attempted to achieve the object of a complete system of education for all the people by reference to those geographical conditions by dividing the whole province, which was not then so large as it has since become, but which was very large no doubt, into twenty-four school districts, corresponding to the electoral divisions which had them-

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selves been constituted with reference to the geographical distribution of the population into Protestant and Catholic, and by providing Protestant schools for one district and Roman Catholic schools for another district. But as time passed it became necessary, and it was possible without in the slightest degree interfering with the principle of denominational education, indeed it became necessary in order to carry it out in its force and vigour as applied to the altered conditions of the province to make various changes. There arose an inequality in the total population which obliged alterations in the numbers of the board. There arose differences in the distribution of the population which obliged an arrangement to be made whereby there might be a Catholic school district and a Protestant school district not absolutely identical, for I believe the fact was there was none such. There might be, however, and there were many districts which were overlapping.

All these substitutions and modifications were designed to render the legislation apt in the altered conditions to carry out an effective system of education yet preserving, as your Lordships see, the denominational system in its full vigour; and of all this, there has never been any complaint on the part of the minority. They have never objected to these changes, and they do not now ask relief from any of the changes which were made from 1870 to 1890.

Now what transpired in 1890? I refer to the judgment:—

“In 1890 the policy of the past nineteen years was reversed.”

I call your Lordships’ attention to that again—

“The denominational system of public education was entirely swept away.”

That is your Lordships’ definition of the change made by the Acts of which we complain.

“Two Acts in relation to education were passed. The first (53 Vic., c. 37) established a department of education and board consisting of seven members known as the “Advisory Board.” Four members of the board were to be appointed by the department of education, two were to be elected by the public and high school teachers, and the seventh member was to be appointed by the university council. One of the powers of the Advisory Board was to prescribe the forms of religious exercises to be used in the schools. The Public Schools Act, 1890 (53 Vic., c. 38), enacted that all Protestant and Roman Catholic school districts should be subject to the provisions of the Act, and that all public schools should be free schools. The provisions of the Act with regard to religious exercises are as follows:—

“6. Religious exercises in the public schools shall be conducted according to the regulations of the Advisory Board. The time for such religious exercises shall be just before the closing hour in the afternoon. In case the parent or guardian of any pupil notifies the teacher that he does not wish such pupil to attend such religious exercises, then such pupil shall be dismissed before such religious exercises take place. 7. Religious exercises shall be held in a public school entirely at the option of the school trustees for the district, and, upon receiving written authority from the trustees, it shall be the duty of the teachers to hold such religious exercises. 8. The public schools shall be entirely non-sectarian, and no religious exercises shall be allowed therein except as above provided.”

So that every school was to be a public school, all Catholic as well as Protestant school districts were to be turned into public school districts, and every public school was to be entirely non-sectarian. Granted that a system of denominational schools had been in force, and was in full vigour for nineteen years. Take the change which is now described by your Lordships. And is it possible to say that rights or privileges of the Roman Catholic minority have not been interfered with or prejudiced by that change?

The Lord CHANCELLOR.—The question seems to me to be this—If you are right in saying that the abolition of a system of denominational education which was created by post-union legislation is within the 2nd section of the Manitoba Act and the 3rd subsection of the other, if it applies, then you say there is a case for the jurisdiction of the Governor General, and that is all we have to decide.

Mr. BLAKE.—That is all that your Lordships have to decide. What remedy he shall propose to apply is quite a different thing. I have already shown that it is entirely

consistent with the view that certain rights may be created that there should be an elasticity in the way of moulding the system. I want even now to suggest to your Lordships what it will be my duty to endeavour to impress upon you more fully—that there is no barrier whatever to any change in a system of denominational education except in so far as it affects the acquired rights of minorities, that we have no right to complain if a denominational system of education affecting the majority has been altogether altered, has become non-denominational; it does not affect the rights which we have acquired. Under this clause it is the right of the Protestant or the Roman Catholic minority which is preserved. The rights of the majority are left to be attended to by themselves and the legislation as to them to be moulded as they wish to mould it. I may add that we have examples of what the legislature meant in Ontario and in Quebec, in one the general system being non-denominational, in the other the general system being denominational, but each being consistent with the rights which were intended to be protected in the minority as to their schools. The statement then goes on to say—

“The Act then provides for the formation, alteration and union of school districts for the election of school trustees and for levying a rate on the taxable property in each school district for school purposes. In cities the Municipal Council is required to levy and collect upon the taxable property within the municipality such sums as the school trustees may require for school purposes. A portion of the legislative grant for educational purposes is allotted to public schools, but it is provided that any school not conducted according to all the provisions of the Act, or any Act in force for the time being, or the regulations of the Department of Education or the Advisory Board shall not be deemed a public school within the meaning of the law, and shall not participate in the legislative grant.”

So that the legislative grant was abstracted from all that did not come within the meaning of a public school. Section 141 provides that no teacher shall use or permit to be used as text books any books except such as are authorized by the Advisory Board, and that no portion of the legislative grant shall be paid to any school in which unauthorized books are used. Your Lordships will find the contrast presently:—

“Then there are two sections (178 and 179) which call for a passing notice, because, owing apparently to some misapprehension, they are spoken of in one of the judgments under appeal as if their effect was to confiscate Roman Catholic property. They apply to cases where the same territory was covered by a Protestant school district and by a Roman Catholic school district. In such a case Roman Catholics were really placed in a better position than Protestants. Certain exemptions were to be made in their favour if the assets of their district exceeded its liabilities, or if the liabilities of the Protestant school district exceeded its assets. But no corresponding exemptions were to be made in the case of Protestants. Such being the main provisions of the Public Schools Act, 1890, their lordships have to determine whether that Act prejudicially affects any right or privilege with respect to denominational schools which any class of persons had by law or practice in the province at the union.”

You sweep out all this historical statement as irrelevant, and at a later passage point out that your Lordships' doubt (which was a polite way of saying that the Supreme Court was wrong in doing it) the permissibility of referring, as even throwing a light on the subject to intermediate legislation.

“They doubt,” say your Lordships, “whether it is permissible to refer to the course of legislation between 1871 and 1890 as a means of throwing light on the previous practice or on the construction of the saving clause in the Manitoba Act.”

I desire to refer at this moment, while your Lordships' observations are fresh in your memory (line 40 on page 156 dealing with the case of identical districts) to the facts on that subject. It is true that there does appear to have been misapprehension in the minds of some of the judges of the Supreme Court, but it is also true that while special provision was made for those particular hypothetical cases of a Roman Catholic and Protestant school districts being identical, I am informed such was not at all the case, and that such was not the general case was admitted on the last occasion by Mr. McCarthy. The general case was the case of overlapping to which I have referred. That was the general case as your Lordships would naturally expect. In that general



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case the confiscation which I refer to was accomplished substantially by the provisions of the Act, because the Roman Catholic school district was turned into a public school district. The school could no longer be used and controlled by the old school trustees. The old school trustees were made for the nonce, and until a certain short period school trustees under the new Act and the only way in which the school could be conducted was under the regulations of the new board. So that the property and rights acquired by the taxation which they had submitted themselves to under the law were availed of, and the school was turned into a public non-sectarian school. In that way there was—I do not want to use the invidious word “confiscation”—but there was appropriation of the old for the purpose of the new schools, differing so completely as they do.

The Lord CHANCELLOR.—You mean that where in a Roman Catholic school district they had assessed themselves, as they had power to do, from which assessment a Protestant could exempt himself, so that it would be exclusively, except so far as the Protestants pleased, money raised by assistance of the Roman Catholics, the school built by money so raised has now become a free school.

Mr. BLAKE.—Yes, under this Act every school has so become, and we cannot use the school otherwise. We have no right to use it for denominational purposes, and carry it on under the old regulations which are repealed, but the power to carry it on there even as a voluntary enterprise has gone. A new set of trustees are to be elected. Now, what happened? There are, or at any rate they may be still, I believe there are, but at any rate there may be, school districts exclusively or almost exclusively Catholic. As I have said they can no longer use those buildings, or levy rates upon their own people for the school in those or in any other buildings. They are thrown back on a voluntary and unorganized effort while the property which they had acquired under the old Acts is dedicated, if that be a proper word to apply, to public school purposes instead of to the purposes for which they created it. The Act calls upon them to elect trustees from time to time. Of course, if the Roman Catholics are not exclusively in possession, a very small minority of Protestants may hold a meeting and elect trustees. If the district is exclusively Catholic, they may not (I believe it is the case, but that does not appear), they may not choose to elect trustees.

The Lord CHANCELLOR.—Of course, if they elected trustees, the trustees would be only in conformity with the Act.

Mr. BLAKE.—Yes, that is the reason they would not go on and elect them. There is a provision which covers even that case of inaction, which would not simply refuse them the right to retain a school, or for organized effect and assessment to carry on their school, but would deprive them of their right to the building. What happens? The municipality, which has a large area containing it may be a majority of Protestants, but at any rate, in all probability a large admixture of Protestants, has, after a certain interval of neglect on the part of the district to elect trustees, the power itself of appointing trustees who are to carry on the school.

The Lord CHANCELLOR.—That seems to me of very minor importance, because of course if the school can only be used, whoever be the trustees, in this way it does not much matter what trustees are appointed.

Mr. BLAKE.—I agree. The purpose of the school for the future is a purpose absolutely different from the purpose for which it was created under the taxation of the Roman Catholics. Of course I need not say that the question of property, although an important consideration, is relatively a minor question. The question of the immunity from taxation for the public schools, and the right to government aid and to taxation for and organization of their own schools, all those are benefits and great advantages obtained by the legislation of which we are now deprived.

Lord WATSON.—I suppose a non-sectarian school would not be entirely approved by Roman Catholics, even if the majority of the trustees were Roman Catholics. They would still be under the Advisory Board.

Mr. BLAKE.—The view of the Roman Catholics upon this subject is stated very clearly in the judgment of your Lordships, and was there stated correctly, not as the view of individual Roman Catholics, not as the view even of individual members of the

hierarchy, but as the view of the Church, and that was that the education must be a religious education, an education in which religion is interfused throughout. That is the purpose. It is a lesser evil if you are going to establish the law of force, disregarding rights of conscience.

LORD WATSON.—I suppose that is what is meant and understood by non-sectarian teaching, undenominational teaching. The statutory word here is "non-sectarian."

MR. BLAKE.—There are a number of statutory words. There is "denominational" as well. I do not find much difficulty in finding what "denominational" means generally. As I have shown to your Lordships, I think I have proved that there is a special meaning in this statute. Take the word "sectarian." The difficulty I have is in finding the exact shade or pale colour of that religion.

LORD WATSON.—It is sometimes used as a word of reproach.

MR. BLAKE.—Yes, but not with us, where all the sects are equal.

LORD WATSON.—"Denominational" does not convey the same imputation.

MR. BLAKE.—No.

LORD SHAND.—How is that as to religious exercises practically worked out. Were there different religious exercises in different districts? Do these regulations apply to all schools?

MR. BLAKE.—I think your Lordship will find, when I bring your lordships to the more detailed information, that the question whether religious exercises should be carried on in any particular school was a question to be determined by the authorities of that school, but if the religious exercises were to be carried on they are stereotyped; the character of the religious exercises is given—

LORD MACNAGHTEN.—Do the Advisory Board interfere with the teaching of the particular denominations?

MR. BLAKE.—There is no denominational teaching.

LORD MACNAGHTEN.—The religious exercises?

MR. BLAKE.—The religious exercises are reading certain selected and prescribed passages of Scripture and a form of prayer. I think that is all.

LORD SHAND.—There was no avoidance of teaching the doctrine a particular body.

MR. BLAKE.—It was an exercise—it was not a teaching.

LORD WATSON.—Teaching religion from which all denominational ideas were eliminated?

MR. BLAKE.—I wish we could find it, because then we should find the common religion.

LORD SHAND.—I suppose that was the effort?

MR. BLAKE.—There was no teaching at all. I am going to come to it. What they call religious exercises were—

LORD MACNAGHTEN.—It was part of the public education. There was no time set apart for providing teaching.

MR. BLAKE.—I think not.

MR. HALDANE.—Section 6 defines it "after hours."

MR. BLAKE.—There may be something of that kind. But it is the public exercises that I was speaking of. I thought my friend interposed to say there was a time for teaching. It is the last thing of the day, so that the boy or girl may go if they do not want it, and so that it may be received, at any rate, at a period when the infant mind is fullest of other things after a day's schooling. All that happens at the most is, as I understand it, the reading of a selected passage and a printed prayer. That happens only when the local trustees direct that it shall happen.

I was saying that under section 89 of the Act of 1890, the last of the series, the municipal rates levied over the district, that is on the whole of the municipal district, which may and does comprise several school districts, comprise a grant to the extent of \$20 a month per teacher. That is a tax over the whole area, and consequently where there is no public school used by the ratepayers in any particular area, because the Roman Catholics cannot use their own school for their own purposes and do not organize themselves under the Public School Act, they are taxed by a common rate over the whole

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area of the municipality for the purpose of paying to the public schools in the district the supplementary contribution. But they do not get any portion of it themselves, because they do not erect a public school or continue their own school as a public school, in consequence of their conscientious objections to teaching from which religion is eliminated.

Now I refer also to the other statement to which I referred your lordships yesterday upon the altered condition, namely, that given in the respondent's case, to which I said, with an exception or two which I wish to make, I gave a general adhesion. I refer to it as establishing from another source authentic and important from the point of view of this appeal, the existence of privileges and the abrogation of those privileges. I get it from page 4, line 28 of the respondent's case.

"In 1871, however, the year after the admission of Manitoba to the union, a law was passed which established throughout the province a system of denominational education in the common schools as they were then called. A Board of Education was formed which was to be divided into two sections—Protestant and Roman Catholic. Each section was to have under its control and management the discipline of the schools of the section. Each of the 24 electoral divisions into which the province had by the Manitoba Act been divided, was constituted a school district in the first instance, and there was to be a school in each district; 12 electoral divisions, comprising mainly a Protestant population, were to be considered Protestant school districts; 12, comprising mainly a Roman Catholic population, were to be considered Roman Catholic school districts."

This is a summary of your lordships' judgment; perhaps it is more important that I should advert to the point which I was just reaching.

"These schools, none of which could properly be called separate or dissentient schools."

I do not think it is material under the Manitoba Act at all, nor do I think it is material in this case, as the law stood in the end, but I suppose it is founded upon the proposition that the whole province being by the first Act divided into Protestant and Roman Catholic school districts, none could be called separate and dissentient schools, each one is a separate school. At any rate, what is important to me is the Roman Catholics. You may have some difficulty in treating the Protestant schools as separate, because you may say "What sect does it belong to?" But when you find a school as to which authority is given to conduct it under the control of religious teaching, which applies exclusively to one religious body, that for which I appear, and which is the minority, can you call it other than a separate school for the denomination? It is a school having religious teaching, the religious teaching of a single denomination, the Roman Catholic denomination, authorized, erected and created by the State in order that such teaching may take place.

LORD WATSON.—A denomination may include a great many sects.

MR. BLAKE—Here I am not dealing with the question of denomination, but with the criticism of the respondent's case on the phrase "separate or dissentient schools."

LORD SHAND.—That phrase is quoted. I suppose it is taken from one of the statutes?

MR. BLAKE.—Yes. I presume the object is to allege that the third subsection of the British North America Act would not apply to this case, because a system of separate or dissentient schools was not created. I say a system of separate schools was created as far as Roman Catholics are concerned, which is all I have to deal with. I do not care if there were no system created as to anybody else. I do not care whether the system as to others be absolutely undenominational or strictly denominational? I am concerned only with the system of separate schools for that minority which I represent here, and which claims a continuance of the privilege created. But I point out that the subsequent legislation altered the condition and removed even that criticism as to the Manitoba Act. The moment that instead of having the whole country cut into 24 school districts, of which 12 were crystallised into Protestant and 12 into Roman Catholic districts, differing from, although framed in substance upon the distribution of the population, the moment that you substituted for that the right to have school districts overlapping one another, identical with one another, Protestant or Roman Catholic, you

established a system of separate and dissentient schools. In the very nature of things the school the minority established is a denominational school. The minority has a right to establish out of the whole or part of the area the school which is to be the school of the minority, conducted according to its views of Roman Catholic education.

The LORD CHANCELLOR.—The word "separate" applied before the Act only to schools in Ontario.

Mr. BLAKE.—Ycs.

The LORD CHANCELLOR.—The separate schools were a system of Roman Catholic schools as distinguished from the general non-denominational system of the whole province.

Mr. BLAKE.—Precisely. The separate school was the technical term applied to the Roman Catholic schools of the province, and was grafted upon a non-denominational school system.

The LORD CHANCELLOR.—Subsection 3 deals with separate schools existing at the time of the union. That of course refers to the separate schools in Ontario and the dissentient schools in Quebec. When it speaks of "Or as thereafter established by the legislature of the province," that is something new, and in order to ascertain what comes within "separate or dissentient," you must look at what the nature of "separate and dissentient" was at the time of the passing of the Act.

Mr. BLAKE.—You are not tied down to the exact forms embodied in legislation, but you must find the essence. I say the essence may be and is proved to be capable of being engrafted on a general system of non-denominational education as in Ontario, or on a system in which the general education was denominational as in Quebec, because the majority by an overwhelming preponderance were of one denomination, and therefore could have it so; non-denomination in Ontario, mainly though not exclusively, because the equally preponderant Protestant majority were of different sects.

Lord WATSON.—Your first proposition is a legal one on the construction of subsection 2 of the Act. I was looking at page 3 of the case. The provisions of that subsection are "An appeal shall lie to the Governor General in Council from any Act or decision of the legislature of the province, or any provincial authority affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to education." You read that as if it ran—I am putting a gloss upon it for the purpose of illustrating the contention I understand you to make—meaning thereby any right or privilege which they may enjoy under previous provincial legislation. I do not say that is exhaustive, but you say it is so.

Mr. BLAKE.—If your Lordship says "including," I am satisfied. I do not know of anything else. I am bound to argue that it does include a right or privilege enjoyed by legislation, and I know of no right or privilege which they could get otherwise than by legislation.

Lord WATSON.—You say that within the meaning of this clause those are privileges which you enjoyed at the date of the Act of 1890.

Mr. BLAKE.—Yes, that is the whole argument.

The LORD CHANCELLOR.—The difficulty is this. On that construction, inasmuch as at the time of the union, there was no system, and, therefore, no right or privilege enjoyed by law, this system to which you take exception, could have been established after the union without objection, if there had been no intermediate legislation.

Mr. BLAKE.—Yes, I have been a little puzzled how to address your lordships in the argument. I began by an attempt which I perceive was, perhaps, not a happy one, to deal with the construction of this Act hypothetically and without reference to our concrete case. On reflection, I think Lord Shand was quite correct in inviting me to state what the claimed rights were. I am going to argue all that which your lordship has stated.

Lord SHAND.—I felt a difficulty in following you without getting a foundation for it.

Mr. BLAKE.—I admit I may have made an error, but I only venture to ask that now I be not drawn into a continuance of that error in the course of my attempt to find the facts.

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LORD WATSON.—It does not follow that it is not the meaning of the legislature because the legislation may be peculiar. It would seem to follow that if the provincial legislature had simply begun by establishing non-sectarian education at first, it could have done so without check or hindrance.

MR. BLAKE.—Yes; but will your Lordship allow me not to jump till I come to the fence.

LORD WATSON.—It does not follow that after the privileges were established, they should not have thought it right to impose some safeguard upon subsequent legislation.

THE LORD CHANCELLOR.—I do not say the second sub-section of the Manitoba Act may not be enough, but it may make it of importance to consider whether the third sub-section of 93 applies. That third sub-section applies where a system of separate or dissentient schools is thereafter established, appeal shall lie.

MR. BLAKE.—I have already stated that I consider it of very great consequence from my point of view; my learned friends will consider it, perhaps, of equal consequence from their point of view, to investigate the meaning of subsection 3, whether it directly governs the case or not. I do not think that we can construe subsection 2 of 22 without a careful consideration and exposition of the meaning of subsection 3 of 93.

THE LORD CHANCELLOR.—It is impossible to avoid considering both; you cannot avoid considering how far subsection 3 is applicable, whether you are to treat 93 as being as a whole inapplicable because as a whole it is varied, or whether you are to treat the whole as applicable except in so far as there is an inconsistency.

MR. BLAKE.—Yes. Then, again, I hold, as my learned friends hold, though from different points of view, that, even if your Lordship should come to the conclusion that 93 is not applicable, yet still, as the base and foundation, it is essential to find out what is the meaning of, and what was done by, section 93. I do not shrink from that discussion, and I am about to enter on it when I have completed this statement of the condition of things.

LORD SHAND.—There is that striking difference that the words "a system" are introduced into the one section and do not occur in the other.

MR. BLAKE.—Yes, there are several other differences. I cannot take them up in a fragmentary manner.

LORD SHAND.—As I understand, the result is that you cannot object to the legislation. The legislation may affect the right, and does affect the right, upon a construction of the statute. All you say is that, if it does affect a right or a privilege, then you ought to be allowed to appeal to the Governor General so as to get redress by some subsequent legislation.

MR. BLAKE.—We cannot object to it as *ultra vires*. *Ex concessis* it is *intra vires*.

LORD SHAND.—Your object is to get the Governor General by some subsequent legislation to remedy it.

MR. BLAKE.—By a suggestion of subsequent legislation, for he is not a legislative body—subsequent legislation which may or may not be acquiesced in by a legislative body.

LORD WATSON.—The provisions of the two Acts may throw some light on each other. Do these provisions of the Manitoba Act not supersede the other?

MR. BLAKE.—That is the argument on the other side—that these provisions are the complete provisions.

LORD WATSON.—No doubt there is something to be found in the Manitoba Act which is not in the British North America Act.

MR. BLAKE.—I am intending when I near it to endeavour to state to your Lordships very fully what is to be found and what is not to be found, and what the differences are. I know that I have to grapple with that subject.

LORD SHAND.—The majority of the judges are against you on that subject, are they? Do they hold that the Manitoba Act supersedes the other?

MR. BLAKE.—Yes, the majority were against me on all questions except the one from arguing which your Lordships have relieved me for the moment; they are three to two against me. That one question being answered in the negative was in my favour, the others were adverse.

Now I wish to give your Lordships a reference to the series of statutes which were dealt with.

LORD SHAND.—Is the purpose of this to show that they were secured privileges?

MR. BLAKE. Yes. I am continuing this portion of the argument and concluding it with what I am now about to state. I am endeavouring to enable your Lordships to master what the situation was and how it has been changed. The first Act was the Manitoba Act of 1871, 34 Victoria, chapter 12. Under that the government was to appoint the members of the Board of Education, of whom one-half should be Protestants and one-half Catholics. The 7th section gives to the board power to make regulations for the general organization of the public schools, to select books, maps, &c., other than those relating to religion and morals, English books for English schools and French for French schools, to alter and subdivide school districts; each section of the board to have under its control and management the discipline of the schools of the section. The section regulates the licensing of teachers, it prescribes books relating to religion and morals, and so on.

THE LORD CHANCELLOR.—How is assent given to the provincial Act? By the Lieutenant Governor?

MR. BLAKE.—Always.

THE LORD CHANCELLOR.—Is there any control over them by the Governor General.

MR. BLAKE.—Yes, there is a power of disallowance. I was about to bring that before your Lordships. Certain divisions to be Catholic districts, the people to elect the trustees, the trustees to determine how to raise moneys and to assess the property in the district, the teachers to be licensed, Protestant or Catholic to send his child to the nearest school of his faith, and if he contribute to be free from payment in the district of his residence. There was no provision for the establishment of a school district of another denomination than that prescribed in the same district. But in 1875 by the 38th Vic., cap. 27 (and that, I am sorry to say, is not in the book of statutes) it was enacted that the establishment of a school district of one denomination shall not prevent the establishment of a school district of the other in the same place. There you get "Roman Catholic" and "Protestant" described as denominations, obviously, and you get a provision for overlapping or identical school districts. The Act of 1877 is not in the book, 40th Vic., cap. 12. That provides by the 10th section that in no case a Protestant ratepayer shall be obliged to pay for a Catholic school, or a Catholic ratepayer for a Protestant school. He was not obliged to pay elsewhere; no one was obliged to pay except for the school of his faith. Then comes 1881, 44 Vic., which is in the book of statutes, cap. 4. It repeals the former statutes and makes the same provision for the appointment of a Board of Education, except that I think it was in a different majority, viewing the preponderance which had come about the Protestant population. The joint board was made to consist of 21, 12 and 9, but the powers of that joint board as a whole were reduced, the former power of selecting books, maps and so forth and altering districts being given to the sections.

THE LORD CHANCELLOR.—It is section 5, subsection c.

MR. BLAKE.—I was endeavouring to refer to the powers of the board as a whole. Certain powers were taken away and given to the sections, and as your Lordship sees, section 5 provides that the board shall resolve itself into sections, and to each section is given complete control over its own school with this exception, that in the case of books having reference to religion and morals the selection of the Catholic section of the board shall be subject to the approval of the competent religious authority.

LORD SHAND.—What is that?

MR. BLAKE.—I suppose the hierarchy. I do not know whether that goes to St. Peter's in the end.

LORD SHAND.—It is their own denominational authority. I thought it might be some general authority.

MR. BLAKE.—Surely it was intensifying the denominational characteristics, if possible. There is no generally competent authority there or anywhere else that I know of. Once again we are reaching after a common religion. Each section is to have control and management of its schools, to examine, grade and license teachers, to select

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all books and maps with the above provision and to appoint inspectors. I refer also to sections 78 and 79. Then under section 12 the school districts were regulated by the municipal councils. It was provided that schools of both kinds may occupy the same territory.

Lord SHAND.—That had been provided for.

Mr. BLAKE.—Yes. This is a repeal and recast of the law. It gives you the law as it stood at the time of the Act of 1890.

Lord SHAND.—Then it is not of much value looking back to anything if that is a repeal and recasting. It gives the history of it, but if this is repealed and recast you get in substance in this Act what you say were the privileges.

Mr. BLAKE.—This is the condition of things as it stood in 1890, and it contained our existing privileges. For the purpose of showing how we stood, the Act of 1881 is apt. Under that Act, section 13, five heads of families with 15 children may be a school district so that although the districts were to be arranged by the municipal councils any five heads of families with fifteen children were entitled to have a school. The school trustees of each district were to be elected; the municipalities were to raise by taxes the amount required by each district. The ratepayers were to pay to the schools of their own denomination, and in no case otherwise. Then there is the provision for the cases of corporations and of property held jointly, a provision as to how their rates should be divided. That is, 28 to 32, 1884, gives the legislative grant to be divided between the sections in proportion to the number of children. Those are the most material provisions, and although there were slight amendments even of this Act, yet there was no substantial amendment nor anything as I understand that interfered with any of the questions your Lordships have to deal with until the Act of 1890 came and swept all away and substituted the system now in vogue. Well, now, by that Act, as I have stated, the Roman Catholic school property was practically confiscated, not by changing the ownership of the property in one sense, because it was in the hands of school trustees appointed under the old law, but by changing the character of the trustees in whom it was to be for the future, by providing for trustees who were to administer a non-sectarian or non-denominational system being elected, and for the property being so controlled. Thus, by so altering the character of the education, the Roman Catholics could no longer make use of the property, and in some cases, where the population was mixed, of course, the complexion of the constitution of the boards was changed. Wherever you had a district in which Roman Catholics had their separate school, and in which under the new regulations a public school was to be managed, the trustees of that school being chosen by the whole of the district, might be Protestant in whole or in part. The 3rd section of the Act of 1890 provided, in fact, that all school district agreements and assessments should be subject to the provisions of the Act. By section 4 the old trustee was to continue as if his term had been created by virtue of an election under the Act, and by sections 6 and 7 certain limited religious exercises were to be permitted. By section 8, public schools were to be entirely non-sectarian, and no religious exercises allowed, except as above provided. By section 108 "Any school not conducted according to all the provisions of the Act, shall not participate in the grant." (4) "No teacher shall use or permit to be used as text books any books in a model or public school, except such as are authorized by the Advisory Board, and no portion of the legislative grant shall be paid to any school in which unauthorized books are used."

Now I wish to observe this also, that it has been suggested on a former occasion—although the argument has not in my mind as direct an application as it had upon that occasion—it has been suggested that whereas the right of the Roman Catholics formerly was to be free from assessment to denominational schools, their right now is to be free from assessment to non-sectarian schools, and that is a different sort of business. Of course the right to be free from taxation for the schools other than schools of their own faith, is a very important part of the whole, one of the most important parts of the whole. I submit it would be absurd to say that the difficulty was removed by making the schools to which the Catholics are to subscribe what is called non-denominational or non-sectarian. What was their privilege? Their privilege was that the public taxes should be devoted to the education of the children of the country in proportion to the

population of the different faiths, and therefore (which is all they are interested in) that they, the minority, should get the proportion due to the proportionate number of children of their faith, that they should raise such local taxes as they required for carrying out their part of that system educating the children of that religious minority, and that the rest, the majority, should raise such as they required for carrying out the education of their children. And to allege that because under the new system—the fundamental objection of the Roman Catholics being against a system in which denominational and dogmatic religious teaching is not admitted and is not interfused with the whole of the education—because for that is substituted a non-sectarian system of education which they object to, therefore no right or privilege of theirs secured to them under the law in respect of immunity from taxation is obviated, is to my mind nothing less than futile and absurd. They are to be exposed under this view to double taxation which they had not before —

Lord SHAND.—Can you call it double taxation? They are exposed to taxation, but if they wish it they must provide another school. You cannot call the second a taxation, can you? If you are not content with the schools that are now established, you have voluntarily to provide others. I was challenging your expression “double taxation;” the second is not taxation but voluntary payment.

Mr. BLAKE.—Very well, my Lord.

The Lord CHANCELLOR.—It is clear under the British North America Act that the privilege of having a separate system, and not being brought within an undenominational system, is one of the rights and privileges intended to be preserved.

Mr. BLAKE.—That was the Ontario system. It existed. It was there. You had a public school system non-denominational. The futility of this argument is to be shown from the facts proved in the case presented on this appeal, because all the material which was before your Lordships in the other case was laid by the order of the Governor in Council before the Supreme Court. The undisputed fact is that the practical operation and working under the new law of so-called non-sectarian public schools is the same as was the practical operation and working under the old law of the so-called Protestant schools. So that the thing—obligation to contribute to which we escaped in practice—was the same thing which is now erected. It may be that there was a power to have additional religious education in the old Protestant schools, but the particular proofs to which I shall refer your Lordships, and which your Lordships accepted as stating the facts, in truth they could not be contradicted, indicate that under the new and under the old, the rule was the same. In a word, the condition of things foredoomed a common system of education conducted for the benefit of the various Protestant denominations to something next door to secularity. It was impossible in practice to provide for fervent, energetic, strictly outlined dogmatic teaching in a school which should concentrate and enlist the loyalty and sympathy and support of Anglicans, of Presbyterians, of Methodists, and some of the other denominations which were there. So that the conditions of the case show that for all practical purposes your statutory Protestant denomination is, and must be, a denomination which can only stand together as a denomination because it gives up for the occasion the distinctive features of denominational teaching, and, in fact, gives up everything but the religious exercises to which I have referred. That was the condition of things before. That is the condition of things now. And that under the condition of things there should be any doubt that we have in 1881 important rights and privileges of a minority in relation to education secured by statute, which rights and privileges have been swept away, of which we have been divested, does seem to me to be a futile argument.

I pass on now to the construction of the two sections that are most important. The two sections which deal with this subject as applied to Manitoba either together or exclusively. As to section 22 I am now arguing the case on the theory that I have to rely on section 22 having already referred to your Lordships the only observations I can make, those contained in the judgment of Mr. Justice Fournier as to the applicability in that sense of subsection 3 of the British North America Act. I have said that I entirely concede the absolute necessity of grappling with the meaning of this subsection both from my point of view and from the point of view of my learned friends.



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Lord SHAND.—If you get it under either section it serves your purpose, does it not?

Mr. BLAKE.—Certainly.

Lord SHAND.—Which do you say is the wider section?

Mr. BLAKE.—I think the Manitoba section is the wider section. That is the view I intend to press upon your Lordships. If I were to commence to construe subsection 2 of 22, I should be met at once by such observations as these: "You must look back and see what is the effect of the other Act. You must construe it by the light of the other Act," and so forth. Therefore, inconvenient in one sense as the course is, and quite ready as I am to adopt any intimation from your Lordships as to your preference in the argument, I have thought it better——

Lord SHAND.—It had not occurred to me that you could narrow the meaning of section 2 of the Act of 1870 by the terms of section 3 of the previous Act of 1867, if it is wider in its terms.

Lord WATSON.—It seems to me to be a good deal wider in its terms. Subsection 2 of the Manitoba Act refers to any Act or decision of the legislature of the province or of any provincial authority, subsection 3 of the British North America Act does not deal with any Act or decision of the legislature.

The Lord CHANCELLOR.—It removes the doubt, but it is by no means certain that "provincial authority" does not include the legislature.

Lord WATSON.—It uses the word "legislature." Your Advisory Board is a provincial authority.

Mr. BLAKE.—If your Lordships think it more convenient to pass away from the construction of subsection 3.

Lord WATSON.—I am not sure, if within the same clause, the word "legislature," is used as having enacted a statute that it is not intended to include the same legislature; it may mean simply that the Governor General is to have control over these provincial authorities, which are constituted for the purpose of carrying out the Act. I do not wish to give a final intimation of opinion, but I do say that the two clauses are not in similar terms.

Mr. BLAKE.—Doubtless.

Lord WATSON.—And that subsection 2 of the Manitoba Act will obviously serve your purpose better than the other.

Mr. BLAKE.—"How happy could I be with either." Your Lordship, before arriving at a conclusion upon that restricted meaning of subsection 3 would, I think, enter into a number of considerations, including, for example, subsection 4, which to my mind adds a good deal of colour to subsection 2 of section 22. It is altogether in my favour to give a narrow construction to this one.

Lord SHAND.—What do you say is the meaning of the words "provincial authority?"

Mr. BLAKE.—If your Lordship asked me, I should have said that you could not throw any light on the construction of an Act of the Imperial Parliament passed in 1867 by the language used in an Act of the Canadian Parliament in 1870. I should say, going back, therefore, unenlightened as to the intentions of the Imperial Parliament in 1867 by the expressions of the Act of Parliament of Canada of 1870, and dealing with this section with the light thrown upon it by section 4, that any provincial authority did include the highest provincial authority—that provincial authority which moulds all others.

Lord SHAND.—Namely?

Mr. BLAKE.—The legislature. I should have thought that the word "Act" was a word appropriate to the conclusions and findings of the legislature. I should have said that the circumstance that a provincial law is by the 4th section indicated as being perhaps called for in order to carry out an appeal, and that ultimately a remedial law of the Parliament of Canada is indicated as the proper remedy for the execution of an appeal, indicates something much stronger than the mere dealing with provincial authorities, officers, administrative boards and so forth, under the control of and susceptible of being handled by the provincial legislature itself. There are numerous observations which I should have made, and my intention had been to enter into an inquiry on that subject, but perhaps your Lordships would prefer that I should——

The LORD CHANCELLOR.—Take your own course, Mr. Blake.

MR. BLAKE.—I will state as briefly as I can the line of observation in part, I daresay, favouring my learned friend's views, which I would make with reference to subsection 3. I am endeavouring to curtail the elaboration of that as much as possible. I have said that I suggest that the appeal is to be from an Act which is the appropriate word for an Act of legislation an Act of any provincial authority, and that the legislature is included, it being the chief provincial authority. I have said that the provision in subsection 4 of the remedy "in case a requisite provincial law is not made" indicates that something which the provincial legislature had done could be complained of. To place the Acts of the legislature outside of the appeal would be to give the appeal only from decisions of officials created by and acting under the authority of Acts of the provincial legislature. Such decisions would be either warranted or unwarranted by the law under which they were created. If they were warranted there would be no ground for an appeal whatever. If they were unwarranted the local legislature putting upon its statute book, and keeping upon its statute book, the law, and the local courts administering the law, would, of course, enforce the observance of their own law by their own officers, and therefore there would be no need for nor any use of an appeal. But if you are to assume that this appeal is solely in order to prevent the danger of local officers of the province disobeying local laws of the province, and to force local officers to obey local laws, to what use? Because if the legislature thinks that the local officers in their neglect are acting in the best interests of the country they will alter the law so as to make it conform to the action of the local officers, and as there is on the hypothesis no appeal from legislation you reach absolute futility. Unless you get an appeal from that which controls all laws, which governs all laws, which may make all that is wrong right and all that is right wrong, you get no effective appeal whatever.

The LORD CHANCELLOR.—It seems clear that it contemplates a remedy for a state of things done in and according to the law existing in the province. It must contemplate that apparently, because if it did not, new legislature would not be required. It contemplates certainly that the only effectual remedy may be new legislation.

LORD SHAND.—Has there been any difficulty in the decision in the Court below as to the meaning of the words "any provincial authority?"

MR. BLAKE.—Oh, yes. When they come to deal with the British North America Act, they find as one of their grounds, that "provincial authority" in the British America Act does not include it. The Chief Justice rests his decision very largely on the light which he says is thrown by the words used there.

LORD SHAND.—Take the later Act, the words are, "or any Act or decision of the legislature of the province, or of any provincial authority." Have the judges in the majority given any narrow meaning to that expression?

MR. BLAKE.—No, it is impossible. There is no such attempt. The legislature of the province is the legislature of the province. They have concluded by a majority that the British North America Act, although it is doubtful—the Lord Chief Justice says he is very doubtful; he finds very great difficulty in arriving at that conclusion—yet that the British North America Act does not embrace an appeal against the law.

The LORD CHANCELLOR.—Certainly it *may* embrace it. If it is intended to embrace it the language is not happy.

MR. BLAKE.—That is an observation which is not infrequently made with reference to Acts of parliament.

The LORD CHANCELLOR. It certainly is not conclusive against its having been intended.

MR. BLAKE.—No.

LORD WATSON.—The two Acts are not the products of the same legislatures.

MR. BLAKE.—No.

LORD WATSON.—Therefore we cannot argue from one Act to another.

MR. BLAKE.—I thought not; at any rate from the later to the earlier.

LORD WATSON.—If it had been a British Act, of course, it would have been said by one side that the second Act was in order to make things plain. It would have been said against that that it shewed that they recognized the distinction.



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Mr. BLAKE.—Yes, I shall have when I read the judgment of the Chief Justice to recur to some extent to that.

Lord WATSON.—The legislature, the body which is supreme, when provincial legislation is spoken of, is the provincial authority.

Mr. BLAKE.—I should have said it was the provincial authority.

Lord WATSON.—I do not think they speak of this in that way.

Mr. BLAKE.—In the second Act it says, "The provincial legislature or any provincial authority," and that is one argument used against me. They say it is clear that there was an interpretation by the Canadian Parliament, that high and competent authority, upon the phrasing of imperial legislation, showing that "provincial legislature" was not included in "provincial authority," because they speak of the one or the other.

The Lord CHANCELLOR.—It is very difficult indeed to rely upon such an indication as that. If anybody had said it is not clear that the "provincial authority" includes "the legislature," it might be said, "Oh, well, we will make it clear."

Mr. BLAKE.—That is the argument I intended to use.

I go on now to a point which is absolutely common to both Acts, and therefore has added importance. It is absolutely common to both the subsections. The arguments seem to me to be just the same. Grant me for argument's sake that the appeal in the British North America Act extends to Acts of the legislature: I want to know to what kind of Acts it extends, whether to Acts *ultra vires* or to Acts *intra vires*? This question arises here, because the argument on the one side is that in the result an appeal is only an additional sanction for sub-section 1, and that it has not to do with any contravention or rather change made by the legislature in Acts which were *intra vires*.

Now there are various arguments which to my mind make a cumulative case absolutely conclusive against that interpretation.

Lord SHAND.—If an Act is *ultra vires*, you do not require an appeal to the governor.

Mr. BLAKE.—I was about to say so.

The Lord CHANCELLOR.—Moreover, you cannot require another Act, because there would be no end to it in that case.

Mr. BLAKE.—That is a construction against which I have to contend. I think it is absolutely clear the other way, but I say so with great diffidence, having regard to the opinions expressed.

Lord WATSON.—Subsection 1 in both are imperative, "Nothing in any such law shall prejudicially affect."

The Lord CHANCELLOR.—Is it disputed that under that first sub-section you could obtain a decision that the Act was *ultra vires* in that respect.

Mr. BLAKE.—Oh, no, my Lord. We have obtained a decision that it was *ultra vires* below, and your Lordships reversed it here.

Lord WATSON.—If we had held it to be *ultra vires* the result would have been that the law would have been inoperative.

Mr. BLAKE.—Surely.

Lord WATSON.—The Act, subsection 1, does not appear to me to raise any case of the discretion of the Governor General.

Mr. BLAKE.—Your Lordships, I am happy to observe, are anticipating all that I was about to say. Looking at the enabling clause and subsection 1, the enabling clause gives power to enact subject to certain provisions. So far as an attempted law may contravene those provisions it is *ultra vires* and is absolutely void. It cannot be used against anyone. The courts will hold it waste paper, just as they set aside the bye-law in Barrett's case below on the erroneous idea that the law had contravened the provisions, but on the accurate idea that if it had contravened the provisions it would have been void. It was not argued before your Lordships that the law would not have been void if it had contravened the provisions. The question was whether a case of contravention has arisen. If the case which the court below assumed had arisen, the contravention being shown, there would have been an end of the law.

Lord SHAND.—There must be a marked difference with reference to anything interfering with what was the state of matters at the union, and anything interfering with the state of matters which had been changed by the legislature after the union. In the one case it would be bad in point of law and *ultra vires*, in the other you can destroy the right, but that destruction of the right is liable to appeal.

Mr. BLAKE.—That is precisely the line which I am about to adopt.

Lord WATSON.—It may be qualified or abrogated.

Mr. BLAKE.—The case does not arise if there are privileges which have not been broken. I suggest that the provision of the enabling clause with subsection 1, is absolutely complete in itself. It requires in its nature no supplement of any kind—no appeal to a political executive tribunal as the Privy Council of Canada—no appeal to a legislative tribunal as the Parliament of Canada, is wanted. Nothing exists for the executive tribunal or for the legislative tribunal to operate upon. No question of expediency, no question of discretion arises. The course of law is all, and it is enough. That is the whole theory. I ask your Lordships to attach force to that view. The general cast of the British North America Act forbids the construction that an appeal of this nature shall exist against an Act *ultra vires* of the local legislature, because there may be and there have been innumerable attempted excesses *per incuriam* or otherwise of their legislative powers by the provincial legislature and by the Dominion Parliament. It must have been foreseen that under a statute like this, with its difficulties of construction, with its interlacings, and overlappings of jurisdiction, such excesses might take place. But no special remedy is given for any of those excesses whatever. The law is held to be sufficient. The attempt is void. You depend on your common right to attack, if necessary, or to defend if necessary, before the courts of justice of the land, who compare the Provincial or the Dominion Act as the case may be, with the supreme law, the constitution, and who find whether it is within or without the power. If it is without the power, the Act is at an end. That was deemed adequate to all the people of Canada in order to deal with all excesses of jurisdiction. Why should there be any necessity, if that be so, for the establishment of this particular tribunal to deal with this dry legal question of excess of jurisdiction? What propriety would there be in setting up the political tribunal of the Privy Council of Canada to deal not with any question of political expediency (as whether legislation should be dealt with in a special way), but to deal with the question of law whether a particular Act accorded with or went beyond the constitutional limits of the powers of the provincial legislature?

These are general considerations. They apply to the question whether you ought to expect any further protection in this regard, but if you look at the language the argument is overwhelming, and of course the same observations apply absolutely to subsection 2 of the 22nd section of the Manitoba Act. There is no intention needlessly to supplement by this extraordinary and inapt remedy the absolutely and complete provisions of subsection 1. The remedy is an appeal; but you do not appeal from null or void legislative Acts. You resist in court an attempt to make them a reality. You demand justice with reference to any man who sets up a document which is a void Act. The appeal which is given applies to Acts or decisions which "affect any right or privilege;" but a void Act affects nothing. It only makes an ineffectual attempt to affect. It is a futile and absolutely void attempt to affect, which the courts do not regard. The appeal is against something which does affect the right. The appeal is to a political and non-judicial tribunal. Could it be said that it was deliberately intended by the British North America Act to change the course of justice by giving an appeal on a question of law to a tribunal like that? What does *this* appeal aim at? It aims at obtaining from the Privy Council of Canada a declaration that some provincial legislation is required to remedy an accomplished wrong. Legislation is required for something that has been done which is wrong; but no legislation is required to remedy an unsuccessful attempt, and abortive attempt to do a wrong, as would be the case if you were dealing with something that was beyond the powers of the legislature. If there had been privileges by law or practice in Barrett's case, no appeal of this kind would have been required, as Sir John Thompson put it in the

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memorandum upon the theory of which he deferred until this stage the proceedings in this appeal. No appeal is required at all, because the law has power to deal with the case.

LORD MACNAGHTEN.—No appeal would lie because it says “from anything affecting any right or privilege.” Subsection 1 does not affect it.

MR. BLAKE.—That is what I say. I say this appeal is from a transaction which does something. That would be an appeal from an abortive attempt to do something.

LORD MACNAGHTEN.—An appeal from something as affecting the rights and privileges which the statute itself says does not affect them.

MR. BLAKE.—Yes. On the theory of the case, nothing in the law shall prejudicially affect, and therefore any case which appeared to affect would be void, and would in fact not affect; but the appeal is from something which does affect.

LORD WATSON.—It simply shows that there may be legislation affecting the interests of the denominations, which is permitted.

MR. BLAKE.—Certainly. The legislation I complain of is permitted.

THE LORD CHANCELLOR.—It is quite clear legislation which affects minorities is permitted if it does not affect something which exists prior.

MR. BLAKE.—Quite so. It is permitted, and the only safeguards we have are two, and I am coming to them presently. There is a safeguard of appeal, and that is the check against the effectuating of that legislation. It is good law if assented to by the Lieutenant Governor; it comes upon the statute-book properly; and no one can properly contest it. Now the appeal is to end how? In case the provincial legislature does not act in pursuance of the views of the Governor in Council it depends on the determination of the Canadian Parliament whether or not they will pass a remedial law, “make remedial laws.”

To remedy what? To remedy something which has gone wrong. To remedy something affecting a right, not to remedy something abortive, not to deal with waste-paper, with something which by the statute has already been in effect declared waste-paper, but to remedy, as I say, some existing wrong.

As I submit the class of cases in the mind of parliament in subsection 3 of the British North America Act and subsection 2 of the Manitoba Act was another class altogether from that which was dealt with by the first subsection. It was a class in which the legislature or the authorities acted *intra vires*, but in such a manner that they did affect certain rights or privileges existing at the date of the action complained of. Now I will refer your Lordships to your judgment at page 153, line 34, as throwing some light also upon this point.

“At the commencement of the argument a doubt was suggested as to the competency of the present appeal in consequence of the so-called appeal to the Governor General in Council provided by the Act. But their Lordships are satisfied that the provisions of subsections 2 and 3 do not operate to withdraw such a question as that involved in the present case from the jurisdiction of the ordinary tribunals of the country.”

I do not say that your Lordships will consider that as conclusive, and of course to the extent to which it favours me it might be conceded in a certain sense to be *obiter*. But there it is. Your Lordships thought that this particular appeal did not affect the appeal to the ordinary tribunals of the country in the case on hand, which was the case of a suggestion that the law had contravened the fundamental law. Then again as to an appeal from the provincial authorities on pre-union laws, is the decision of the provincial authority on the pre-union law not according to law? If so the local authorities should of course maintain and enforce the local law. Is the decision within the local law? Then no successful appeal is possible. But I acknowledge and I suggest that it may be that cases of enormously wide discretion may exist under the law in administrative bodies with reference to the class of subjects which I aver are covered by this appeal.

THE LORD CHANCELLOR.—The law might not in itself if administered in a particular way affect any rights or privileges, but you might have such power vested in an individual as enabled him to affect them.

MR. BLAKE.—You give such a power to make regulations without, perhaps, going beyond the law in a way which would make courts of justice say you were going beyond them, that the practical effect would be to *thwart* what you found was the intention of the law; I fancy it was to meet that. There is no doubt that in some provinces of Canada, and I believe examples are to be found elsewhere, a very large proportion of the educational system has by the law been entrusted to administrators, the administrators being responsible of course to parliament, who will amend and alter the law in case they find the authority is abused. The administrators may have power to colour and change the system to a very great extent.

LORD SHAND.—Have there been appeals of that kind—not from an Act or decision?

MR. BLAKE.—No, there is no instance of any appeal. This is the first.

LORD SHAND.—A pretty large question would arise afterwards if there should be any future legislation and a prospect of other discussions.

MR. BLAKE.—That would be an additional good fortune, my lord.

LORD SHAND.—“Or in case any decision of the Governor General in Council on any appeal under this section is not duly executed by the proper provincial authority in that behalf, then and in every such case and as far only as the circumstances of each case require, the Parliament of Canada may make remedial laws.” It is very curious.

MR. BLAKE.—Now, all that I have said up to this applies as expressly to subsection 2 of section 22, as to subsection 3 of section 93. But what I am now about to point out to your Lordships has a more limited application, although I think it throws some light upon the other statute. If your Lordships will look now at subsection 3 you will find that the draughtsman, as too often perhaps happens, has attempted to mass together—

THE LORD CHANCELLOR.—Do they say that subsection 2 only applies as regards legislation for the purpose of enforcing No. 1?

MR. BLAKE.—Yes.

THE LORD CHANCELLOR.—Only?

MR. BLAKE.—Yes, my Lord, only. Of course it is enough for me if it applies to both.

THE LORD CHANCELLOR.—If so, upon the construction which has been put upon subsection 1 by this board, the whole has no application at all.

MR. BLAKE.—The whole protection, given to the minority might just as well be blotted out. It would be blotted out. Your Lordships have established that there was no occasion for the 1st subsection, and then there would be nothing whatever for the Manitoba minority at all.

THE LORD CHANCELLOR.—This is not a general enactment applicable to the provinces, to some of which it might apply and to others not; it is a special enactment applicable only to Manitoba.

MR. BLAKE.—And that is part of the light which is to be thrown upon it by the argument I am now about to adduce. I want to find what the effect of the general provision was over the other provinces. My argument is that although it was by no means intended by the British North America Act to establish a general equality of condition where pre-union conditions differed, yet, subject to the one arrangement made between Ontario and Quebec, it was intended to apply a similarity of conditions of protection and of check to provinces similarly circumstanced; and I find thus in this case as in other cases of the British North America Act a general attempt to deal with one plain and level condition which was to be created for the provinces, though not an attempt to put them all in the same condition by some forced enactment at the time of the passage of the Act. Your Lordships will please to look at subsection 3, and allow me to divide it up into two classes of cases with which it clearly and on its face deals. “Where in any province a system of separate or dissentient schools exists by law at the union or, is thereafter established by the legislature of the province an appeal shall lie.”

Will your Lordships permit me to take first of all the second provision, and to read the clause with it, “Where in any province a system of separate or dissentient schools

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is after the union established by the legislature of the province an appeal shall lie from any Act or decision." I ask your Lordships to say that is a perfectly fair reading. Now is it not absolutely clear—

The Lord CHANCELLOR.—In the third subsection as regards the first part of it, "Where in any province a system of separate or dissentient schools exists by law at the union," a consideration of the state of things created by subsequent legislation could not exist according to you, because it would be prevented by subsection 1.

Mr. BLAKE.—There might be some changes.

The Lord CHANCELLOR.—I mean a change which prejudicially affects by taking away their rights or privileges.

Mr. BLAKE.—I wish to put to your Lordships an argument in a moment which involves the question of "prejudicially affecting." There is a distinction adverted to before on that, which I intend to deal with later. Shortly it is this: In the case of rights and privileges protected from being affected by the subsequent change in the legislation—additional legislation—new legislation—which did not alter absolutely to our disadvantage but which gave, as for example, an added grant upon principles which gave more absolutely to us than we had before, but gave less to us relatively to the majority than we had before—might involve an "affecting," by putting us in a position which could not be said to be "prejudicially affecting," because we got more money.

The Lord CHANCELLOR.—Could you say that there would ever be an appeal against something which affected you beneficially? Your argument suggests that—that although there is more money, on the whole there is a prejudice otherwise you would not appeal against a benefit?

Mr. BLAKE.—I have just endeavoured to state—

Lord WATSON.—We were dealing with the question under that subsection—whether an appeal is not given to the Governor General from a decision of any provincial authority constituted by this same Act.

Mr. BLAKE.—Upon that I have already addressed the argument to your Lordships which occurred to me.

Lord WATSON.—The clause is perfectly intelligible as giving an appeal against the administration of existing Acts. The decision of a board appointed by one of these Acts establishing denominational schools and separate schools, might very well be appealed.

Lord SHAND.—Do you contend that under subsection 1 and the first part of subsection 3, there would be an alternative remedy in case of legislation which went too far?

Mr. BLAKE.—I do, as a possible construction.

Lord SHAND.—And you might have an action in court to say that is bad—that is absolutely struck out, or I may go to the governor about it.

Mr. BLAKE.—My view is, that though the clause may be wide enough to embrace these things, the mind of Parliament had reference to other things.

Lord SHAND.—I do not know what benefit or use these may be.

Mr. BLAKE.—They are no use. I was desirous to be allowed to point out to your Lordships what is the necessary result of the division into its two parts of this clause, beginning with the case of post-union Acts. Your Lordships will see at once why I am going on subsection 2 of 22, and contending that it should be held to apply in a case in which there are no pre-union rights or privileges at all. Your Lordships have so decided. I have got the case of no pre-union rights. Now, is there in the British North America clause, any provision for a case in which there are no pre-union rights? I say, yes, expressly, and I read this clause in that way. "Where in any province a system of separate or dissentient schools is after the union established by the legislature of the province an appeal shall lie." Is it not perfectly clear? And it is enough for my purpose that the Imperial Parliament contemplated giving an appeal to the Governor in Council in cases in which there were no pre-existing rights, no pre-union rights, no rights protected by subsection 1 at all, no rights, a contravention of which would be a null Act. That is perfectly plain. These were the cases of Nova Scotia and New Brunswick.

LORD WATSON—The difference becomes material having regard to sub-section 2 of the Manitoba Act, at least to my mind. The appeal in the two cases is of a different kind. The appeal against an Act of the legislature it may mean, and does mean, I take it. The Act of the legislature which has become law would be the law of the province if it were not modified on appeal to the Governor General. The effect of that is that if the Governor General decides that it is wrong that law will stand modified.

THE LORD CHANCELLOR—It must be modified by legislation.

LORD WATSON—It must be modified by legislation, and if it is not modified by the provincial legislature in itself, then provision is made for the modification being enforced by an Act of the Parliament of Canada. In the other case the Act or decision of the legislature of the province, or of any provincial authority affecting the right can be abrogated without touching upon the legislation which established that provincial authority. On the other hand it might very well be that abrogating an Act of the provincial authority which affected the right or privilege of the Protestant minority, might be effected without in the least degree touching upon educational legislation.

Supposing the Advisory Board laid down that certain Roman Catholic books should be used, in those schools where Roman Catholic publications were to be permitted. The Governor General would have a right to say I cancel that ordinance, and I say that such other books substituted by the Roman Catholics themselves shall be substituted. The grievance might consist in the selection of books by an authority constituted for the purpose of administering the Act. That might very well be so. It challenges what is done by those who are administering the law. I quite admit their actions may be of such a kind that one runs very closely to the other. There might be a challenge of both. First against the statute giving too great latitude, and secondly against the action of the administrative board.

MR. BLAKE—I say at this moment, my lords, I am engaged upon the argument of the meaning of this clause.

THE LORD CHANCELLOR—What you are saying is this, that the third subsection of section 93 clearly pointed to the protection of rights acquired by legislation subsequent to the Act of Union.

MR. BLAKE—Yes.

THE LORD CHANCELLOR—That is what you are upon.

MR. BLAKE—That is all I am upon, and respectfully ask your Lordships that I may be permitted not to further discuss the question whether this includes legislation or not, because I think I have already dealt as fully with that whole subject as I am able. I do not think I can usefully add anything further upon that. What I maintain is this, that I have submitted to your lordships that the Imperial Parliament designed that in a case where there were no pre-union rights or privileges whatever, where, therefore, there was nothing which could make any law in relation to education void under subsection 1, where by consequence the provincial law would be effective law, it yet provides an appeal against post-union legislation——

THE LORD CHANCELLOR—Or the effects of post-union legislation——

MR. BLAKE—Or the effects of post-union legislation: one or the other, affecting any right or privilege of the Protestants, of the Protestant or Roman Catholic minorities. No pre-union right could in that case be established. From the very language of the Act the right affected was to grow out of the power exercised subsequent to the union by the legislation of the province to set up separate schools. The section is, "Where in any province a system of separate or dissentient schools \* \* \* \* \* is after the union established by the legislature of the province an appeal shall lie \* \* \* \* \* from any act or decision \* \* \* \* \* affecting any right or privilege." Therefore an Act or decision passed subsequent to the post-union legislation. An appeal was given from an Act affecting things created by the legislature of the province, *intra vires* of the province, in the case of the two provinces, Nova Scotia and New Brunswick.

THE LORD CHANCELLOR—That might be satisfied supposing you had a system of non-denominational education previously which was open to all, a system we will suppose somewhat similar to that which was created in 1890 in Manitoba, and then you afterwards establish a denominational system. It might be intended to preserve the rights



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which existed by that legislation to a conscience clause, or something of that sort. It can hardly be said that those words would be purposeless, unless they intended and included rights created by post-union legislation. They may be a protection from post union denominational education?

Mr. BLAKE.—No so, my lord.

The Lord CHANCELLOR.—I understand what you say. It could not be so, because the first sub-section deals with that case.

Mr. BLAKE.—Not only that, but because this section in the limb with which I am now dealing deals only with the case of the creation of privileges after the Union.

The Lord CHANCELLOR.—Is it necessarily the creation of the privilege? It does not say the creation of the privilege. They set up after the union these denominational schools, we will suppose. These denominational schools may be so administered as to affect rights then existing—persons who desire undenominational education. It is true denominational schools have come into existence, but there are two sides to this question. You may injure denominational people by non-denominational education, you may injure non-denominational people by denominational education, and therefore the words would be satisfied by an application (I do not say there was such a case) to a case where post-union denominational education affected the rights of those who desired and had therefore enjoyed non-denominational education.

Lord SHAND.—That does not in the least affect your argument that you are putting.

The Lord CHANCELLOR.—Well, it affects the argument Mr. Blake is putting, but it does not affect his argument under section 22. I understood the argument to be this—and if it can be established there would be force in it as throwing light on the other—that subsection 3 must have been designed to protect rights acquired under denominational legislation of a post-union character. It does not seem to be certain that that must be so, and, if so, the force of the argument is gone as assisting you.

Mr. BLAKE.—Will your Lordship, then, allow me, for the purpose of meeting your argument, to refer to the other limb as throwing light on this one. The cases provided for are two in class. They are exhaustive. There is to be appeal in no other than either of these two classes of cases. The first class is where a system of separate or dissentient schools exists by law at the union. Now, that is already protected. It is protected by the prior clauses. It cannot be struck at.

The Lord CHANCELLOR.—Well, it is protected so far as regards the law. It cannot be altered by law, but it may be most materially affected by the administration of the law.

Mr. BLAKE.—Yes, my Lord, but your Lordship is dealing with it in the sense of protection of the non-denominational part of the community, but it is the protection of those who go for the system of separate schools such as the Roman Catholic denominational school, or the dissentient school, which was the title mainly of the distinctively Protestant separate school in the province of Quebec. Those were the two systems which were referred to.

The Lord CHANCELLOR.—Yes, but then you may have thereafter what I will call the Quebec system, where the majority is denominational and creates a denominational system. You might have that created afterwards, not having existed at the time of the union.

Mr. BLAKE.—Doubtless.

The Lord CHANCELLOR.—And by its creation affecting the educational rights which were existing at the time of the union.

Mr. BLAKE.—Not affecting it with regard to this appeal because upon that theory it is a general system which is to be altered—the general system applicable to the majority of the population, but this appeal is only from acts which affect the minority of the population.

The Lord CHANCELLOR.—I am putting the case where you had a non-denominational system existing.

Mr. BLAKE.—Take Ontario.

The Lord CHANCELLOR.—Very well, we will suppose that afterwards the cases were reversed, and that in Ontario the Roman Catholics became the majority and the Pro-

testants the minority. Of course we cannot take that particular case, because Ontario and Quebec are provided for by the special provisions, but I am taking the case of another province.

Mr. BLAKE.—Will your lordship allow me to interpose. It is utterly impossible for your Lordship, knowing all the circumstances of the case, to omit Ontario and Quebec, because there were four provinces covered by the British North America Act, and you know what their laws were. These clauses show that there was a system of denominational schools in Ontario and Quebec.

The Lord CHANCELLOR.—What were there in the other provinces?

Mr. BLAKE.—There were none, my lord. In Nova Scotia and New Brunswick there was no system of separate or dissentient schools.

The Lord CHANCELLOR.—Was there an educational system?

Mr. BLAKE.—Yes, there was; but one which did not provide for separate or dissentient schools.

The Lord CHANCELLOR.—But in one of the provinces there might have been a system which did establish a separate system, and you might have needed, owing to the establishment of that separate system, a protection for the minority who were outside it, or did not want it—just as much as a protection for the persons who were in the minority.

Mr. BLAKE.—Your Lordship suggests that the application of it would be to a case in which the majority in the provinces established a system of separate or dissentient schools—separate or dissentient schools which in all cases are schools of the minority—for the majority, and so oppressed the minority by making the general public school system a system to which they could not send their children.

Lord WATSON.—I think it was intended to give an equal remedy.

Mr. BLAKE.—I ask your Lordship to consider that it is the establishment of a system of separate and dissentient schools, which means schools for the minority, and once that is established, whether they were established before the union, or if they had been established after the union then an appeal lies.

The Lord CHANCELLOR.—You say that separate or dissentient cannot mean a general system; that separate or dissentient implies that it is a separate part.

Mr. BLAKE.—You are separate. What are you separate from? From the bulk. You are dissentient. You are dissentient from the majority.

The Lord CHANCELLOR.—I think that may be an answer.

Lord SHAND.—There is that idea of the minority which occurs afterwards.

Mr. BLAKE.—Yes, my Lord, it is all the same.

The Lord CHANCELLOR.—The point I was putting to you would equally affect the minority. If you had a general system established, we will suppose, in Nova Scotia, and the Roman Catholics got the upper hand and established a system of denominational education and said, "We will have nothing but Roman Catholic schools, where nothing but the Roman Catholic religion shall be taught," of course, there the Protestants must be most materially and prejudicially affected by it.

Mr. BLAKE.—Doubtless.

The Lord CHANCELLOR.—Do you say that there would be no remedy in such a case as that?

Mr. BLAKE.—The case never occurred to me, because it is so absolutely opposed to all the traditions and feelings and actions of the people concerned.

The Lord CHANCELLOR.—It may be that it was not anticipated, and therefore it may be an answer to say that it was so improbable that nobody contemplated it, and therefore they did not provide for it, but your construction would leave it unprovided for.

Mr. BLAKE.—I have not thought it out. It never occurred to me as within the realms of conjecture.

Lord SHAND.—The rights and privileges of the Protestants are as well guarded here as the Catholics.

Mr. BLAKE.—Certainly. The intention was to guard them as well.

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The Lord CHANCELLOR.—Certainly you are so far justified that the provision relating only to the establishing of a system of separate or dissentient schools does seem to indicate that it was only applying to an educational system thereafter created for the benefit of the minority.

Mr. BLAKE.—For the benefit of the minority.

The Lord CHANCELLOR.—I quite agree that the use of the words “separate and dissentient” points to it.

Mr. BLAKE.—Yes, because you have got systems created——

The Lord CHANCELLOR.—You say that it is a matter that could not be contemplated because it is impossible that it ever could come about, but it would be a curious result if there were no protection to either a Protestant or a Roman Catholic minority if you had a denominational system unpalatable to the minority created without any separate system.

Mr. BLAKE.—That is true, my Lord ; but I really think that it never occurred to anybody to suppose that it could be done.

The Lord CHANCELLOR.—Quite so ; they were dealing with places where they had these schools in Quebec and Ontario, and, as to the others, still you might have, of course, a Protestant system.

Mr. BLAKE.—For instance, my Lord, it passes the wildest dreams of conjecture to suggest that there would be a Roman Catholic majority in the province of Nova Scotia or New Brunswick.

The Lord CHANCELLOR.—Supposing that they established a general system of schools, the Roman Catholic majority might be prejudicially affected, and there would be no redress.

Mr. BLAKE.—It may be so, but I really conceive that that was a case not thought of. What was apprehended as possible was that the privileges given to the minorities by the existing legislation might be affected or impaired by the majority, but nobody thought of the majorities changing colour, creed or complexion ; but that to the full extent all these existing privileges were intended to be guarded by subsection 1. Then, as I conceive, the intention of this one was to deal with the post-union creation of rights.

The Lord CHANCELLOR.—I am not sure that attempting to illustrate the 2nd subsection of section 22 by this one is not *obscurum per obscurius*.

Mr. BLAKE.—Perhaps so.

The Lord CHANCELLOR.—Although I quite appreciate your point.

Mr. BLAKE.—Then, my Lord, I was endeavouring to point out to your Lordships that under that, considering the system of separate or dissentient schools as expounded by the whole clause, the prior parts of the clause and this one, and by reference to the existing plans of separate or dissentient schools, the foundation of the rights acquired in future and intended to be protected, is the establishment of a system of separate or dissentient schools later on in either of the provinces of Nova Scotia and New Brunswick. That done, an appeal lies from any Act or decision affecting any right or privilege so acquired whether by the Protestant or the Roman Catholic minority. Now, if that be so, and I submit that any reasonable construction is conclusive of that proposition, why should the minority of the Queen's subjects, Protestant or Roman Catholic, in Quebec or Ontario, be deprived of the same right of appeal in the case of any subsequent privileges granted to them, although they had a system of separate or dissentient schools at the union. I get an application for the first limb of the sentence from the consideration of what the second limb does for those provinces in which there was no pre-union system.

The Lord CHANCELLOR.—That of course is on the assumption, I do not say it is well or ill founded, that the privileges and rights intended to be protected by the third subsection in the case of the post-union legislation, are the privileges and rights acquired under that legislation which so establishes the separate or dissentient schools.

Mr. BLAKE.—My Lord, in the case of pre-union legislation it is just the contrary.

The Lord CHANCELLOR.—I say you are applying now post-union to pre-union legislation. That application, so far as it assists you, depends upon your making good

your contention that the rights and privileges intended to be protected by subsection 3 in the case of post-union legislation, are the rights and privileges acquired by that legislation.

Mr. BLAKE.—Granted, my Lord. Then, on that assumption, I point out that it may happen, and, as a matter of fact, it has happened, that in both Ontario and Quebec where there were systems—in the one of separate, and the other of dissentient, schools—at the union, there has been further legislation granting additional privileges to the Protestant minority in Quebec, to the Catholic minority in Ontario. It is enough for me to say it might have happened, as a matter of fact it has happened. I ask on what principle, on the assumption which your Lordship is making and which I concede, could that minority in Ontario and Quebec be deprived of that same protection for post-union added rights and privileges granted to them which is given to the Protestant and Roman Catholic minorities in other provinces for rights and privileges created after the union? And so you get a reasonable meaning and construction for the two limbs without dealing with the pre-union rights at all. You have two cases of pre-union legislation where certain rights and privileges have been granted, and are absolutely protected. You have two cases where there were none, and in both those classes of cases it was possible that after the union, in the one a system might be created giving rights and privileges to the minority, and in the other further rights and privileges might be given to the minority. Both these transactions would be *intra vires* but liable to repeal. Acts repealing these rights and privileges would be *intra vires*; but as to repealing, these rights once created are subject to possible check under an appeal. That is the suggestion I have to make on that subject.

Now, one last observation. In subsection 4 you find: "In case any such provincial law as from time to time seems to the Governor in Council requisite for the due execution of the provisions of this section," and so on. The phrase "from time to time" would rather indicate an idea that from time to time there might be transactions affecting the minority, and that from time to time remedial laws might be required, than that it refers to one single set of transactions before the union, sought to be and sought ineffectively to be struck at, by transactions after the union.

Now, I do not at this moment turn to subsection 2 of 22, because I propose to treat subsection 2 separately, so far as it requires separate treatment. I want to finish my examination of the British North America Act on points which are common to it and to subsection 2 of section 22. There are other reasons I aver against 3 and 4 being a remedy for breach of the prohibitions in subsection 1, and they are to be found in both subsections, in the marked differences between the subsections themselves. First, as to the persons who can take advantage of, or who are within the benefit of the sections respectively. The persons who can take advantage of the first subsection are "any class of persons" whether the majority or the minority, or any individual as I suggest, belonging to any class, or perhaps any one at all, although he stands alone if he is attempted to be touched or affected by the void law. If he is attempted to be touched or affected by the void law, he has a right to complain on being so attempted to be touched or affected. If he is struck at he has a right to set up that the law is void, and this by its nature—by the nature of the provision—and by the definition.

The Lord CHANCELLOR.—I suppose you would say that if you had an undenominational system in Nova Scotia or New Brunswick which gave educational rights to all persons of undenominational character it would be an interference with this subsection 1 if you were to create an entirely denominational system. The words are: "any right or privilege with respect to denominational schools," but I suppose that would as much cover a right to have education undenominational as a right to have it denominational.

Mr. BLAKE.—That may possibly be, my Lord. I do not know, I am sure, I have not considered that question.

Lord MACNAGHTEN.—They were guarding denominational schools.

Mr. BLAKE.—I am convinced that the legislation had the aspect of guarding denominationalism.

The Lord CHANCELLOR.—It made provision for a denominational system.

Mr. BLAKE.—Theoretically; what practical men were dealing with was this—that the trend of thought, if there was a trend of thought, was rather in favour of the uniform system, and those who thought that uniform system an abominable injustice in the sense of its allowing denominational education, and compelling children to attend schools where they were taught no religion or a religion which they did not profess, and those who feared the danger of its offending the views of the minority, who insisted, on religion being mixed with education—

Lord WATSON.—I think the difficulty I had in following the argument in connection with this is that subsection 1 of the Manitoba Act seems to me to be conceived in terms which *prima facie* show that a certain subject was to be excluded from the field of legislation—altogether shut out.

Mr. BLAKE.—Yes, my Lord.

Lord WATSON.—Well, I think it is hardly probable that the legislature would proceed to deal with legislation upon that forbidden topic, legislation liable to be revised and altered by the Governor General to such an extent as he shall think fit.

Mr. BLAKE.—I am very glad to hear your Lordship say so.

Lord WATSON.—I think the power of the Governor General must have reference to some subject matter which was within the competency of the provincial legislature to make laws upon.

Mr. BLAKE.—Yes, my Lord.

Lord WATSON.—They are subject no doubt to it and they may be constrained by *force majeure* in the shape of the Governor General and the Canadian Parliament, but until that is done their legislation stands.

The Lord CHANCELLOR.—Are there instances of laws of the provincial legislature having been disallowed on the ground that they were *ultra vires*?

Mr. BLAKE.—Yes, my Lord, there are rare instances of that kind. I may touch upon the subject afterwards.

Now, as I was saying to your Lordship, your Lordship's proposition is that what the legislature was thinking of and trying to guard against, was the creation of a system by the majority, by which they should compel the minority to attend schools in which religious doctrines in which they did not believe were taught, and would be crammed down their throats. Now, that we looked upon as an impossibility. We are not past the age in which it is thought that the proper system may be, (and it is in some places thought to be) one which is absolutely non-denominational, if it can be so framed, and without religion in that sense. That is another question. But the idea of a majority, whether Catholic or Protestant, using or abusing power to force the minority to come to the schools and be taught, if Protestants, by a priest—

The Lord CHANCELLOR.—No, no; I do not know that it is an inconceivable case that the Roman Catholic, if in a majority, might create a system of purely denominational schools, with a conscience clause. There is nothing extraordinary in that.

Mr. BLAKE.—No; because the very system of education, as your Lordship finds from the admitted state of facts, is not a mere question of sacred images being stuck up on a wall or concealed in a cupboard, or of the children staying away if they do not wish to attend, but what they contend for is the question of interfusing religion all through the teaching.

The Lord CHANCELLOR.—I believe there are Roman Catholic schools in parts of Ireland which are available for Protestant children, and where their only protection is the conscience clause.

Mr. BLAKE.—It may be, my Lord; but of course in this case we are dealing with a state of facts, so far as the facts are concerned, as to doctrines held—

The Lord CHANCELLOR.—But it was looking to the future, it was not intended for a time, if I may say so.

Mr. BLAKE.—No, I do not make myself clear. What I mean is that the doctrine of the Church and the view of the church is to teach religion throughout the teaching in the schools. I refer to the evidence which was accepted and upon which your lordships acted on the last occasion. I will refer your Lordships later to passages of the evidence of the archbishop which were accepted as common ground, and as correct as to the Roman

Catholic view. And I think your lordships will see that such a view is absolutely inconsistent with the idea that the full development of the Roman Catholic plan, which they assert as their right under denominational schools, could be effected by them without doing violence to the consciences of Protestants.

LORD MACNAGHTEN.—If an Act, similar to the Act of 1890, had been passed in 1871, you would have had no privileges at all.

MR. BLAKE.—Granted, my Lord.

LORD MACNAGHTEN.—It would have been the first Act. Would you have had any privileges?

MR. BLAKE.—I do not think so. I have not considered the subject; my impression is that your Lordship is correct.

LORD SHAND.—I think that is quite clear, because it must be a privilege that has been affected by subsequent legislation.

LORD MACNAGHTEN.—You say such a thing was not in contemplation at that time.

MR. BLAKE.—I was not saying that, my Lord, at the moment; what I say was not contemplated at that time, and is not contemplated now. Much as I may object, the Act of 1890 is the creation of a system in which a distinctly dogmatic teaching contrary to the opinions of those who have to attend the schools would be forced upon them.

THE LORD CHANCELLOR.—Of course you might have this state of things. This is a Manitoba Act. It is framed with a view to the condition of things there. It may have been known that at that time the parties were as nearly balanced that to take for instance the Roman Catholics, they were quite able to protect themselves against legislation which would deal with them unfairly, but that the character of the population as it grew by emigration and so on, would change, and that in that way the legislation which was then obtained, and which they knew they were in a position to obtain, might be prejudicially obtained.

MR. BLAKE.—That is what I was about to argue later on. Take the circumstances of Manitoba as to population, take the contentions that were raised, follow up the power given in relation to education with what was at once done, and you find the legislature itself recognizing the condition of equality by the Roman Catholic claims, and dealing with education in this way. It was in contemplation that it should be so. There was no difficulty about it then, and that state of things continued for 19 years. I think if we are to enter into the realms of conjecture, we may well conjecture that the people of Manitoba and the people of the Dominion in framing this provision framed it on the theory that that would be done which was done, and that being so, the question was whether at some future time a condition of things altogether different might not arise in which the expected legislation might be altered, and whether there should not be some protection against the danger of that alteration. There is no doubt that it would be a reasonable conjecture in view of the circumstances of the province, and of the other provinces, and viewing the sources from which emigration might be expected, that those who were then the majority would become the minority, that the Protestants would be overwhelmingly in that majority. Nobody conceived anything else as within the realms of possibility, and that being so, it was expected that laws thought just and at any rate acceptable to the population at the time would be passed, and it was intended to give some security against their subsequent repeal. Now, when one of your lordships took up that other question, I was asking your Lordships to take three or four points of distinction which add to the force of the proposition that this subsection and the Manitoba subsection are not additional means or sanctions for the observance of subsection 1, but are directed to something else. The first one is that the persons who can take advantage of or come within the benefit of subsection 1, are all classes of persons whether of the majority or the minority. Logan, for example, who was before your Lordships in the former case, was one of the Protestant majority. In Barrett's case there was another intervener. Logan, who appeared under singular circumstances in favour of the Anglican church. Logan was one of the majority, but nobody denied that he was within the benefit of this section, and could complain that this law was void if it had violated rights or privileges with regard to his denominational school.

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Thus any person touched by the void law, and any class of persons according to the express language, although that class may be the majority, can strike at the law and avail themselves of the protection of the law under the first subsection. But who are saved by the later subsection? You are not to affect any right or privilege of the Protestant or the Roman Catholic minority of the Queen's subjects. The law alters the class of persons; anyone, whether of the minority—

The Lord CHANCELLOR.—That subsection 2 seems to indicate the view that what was the minority, whether the Roman Catholic or the Protestant might from time to time be changed.

Mr. BLAKE.—Yes, my Lord, it may be, and probably was, the case, that it was uncertain which was in the majority at that moment. They were about on an equality.

Lord MACNAGHTEN.—About 25,000 each.

Mr. BLAKE.—I do not think there was as many, though I do not remember now.

Lord MACNAGHTEN.—It is only my recollection. I dare say I am wrong.

Mr. BLAKE.—I do not remember clearly how that was.

Lord MACNAGHTEN.—It was very small, they were very equally balanced.

Mr. BLAKE.—They were very equally balanced, as everything shews. The board is made equal by the subsequent legislation. The districts are made equal—there are 12 Protestant and 12 Catholic districts. I do not know really which was in the majority at the time, but it was well known that that condition of things would not remain.

Lord MACNAGHTEN.—I rather think that the Roman Catholics were slightly in the majority.

Mr. BLAKE.—That was the vague impression I had, but they being my clients I did not like to say so; the vague impression I had was that they were slightly in the majority, but everybody knew that that state of things would not continue. Now, as I say, the second class of persons who could alone take advantage of this later subsection were the Protestant or Roman Catholic minorities; so that, while a member of the religious majority of the population can take advantage of No. 1, he cannot at all take advantage of No. 2. You have different classes. Then the rights protected are different. In subsection 1 they are rights with respect to denominational schools, existing by law at the union, but in subsection 3 they are rights in relation to education, and here comes in an observation I made yesterday pointing out to your Lordship how wide the phrase "in relation to education" is. There is a different phrase adopted, and, of course, there is no limitation of time. Nothing is said about "at the union." On the contrary, as I have argued, there is an express indication of post-union rights being intended to be dealt with. There certainly is no limitation, so that you have a new phrase used as to the rights and a new phrase as to the persons.

Lord WATSON.—If you confine it to these cases under subsection 2, it looks very like prescribing rules for taking appeals in actions which cannot be completely brought.

Mr. BLAKE.—Yes, my lord, no doubt.

Lord WATSON.—In other words, appeals for the purpose of correcting legislation, which is *functus incompetens*; it may be so. It may be an awkward way of saying it.

Mr. BLAKE.—So that you have in the first rights with regard to denominational schools existent at the union, and in the second you have rights in relation to education in cases in which certainly after the union, though also possibly owing to the width of the language, but not according to my conception in the mind of Parliament before the union, a separate, and dissentient class is established. Then thirdly, the character of the Acts guarded against is different; subsection 1 says shall "prejudicially affect;" subsection 3 says only "affecting," and as I have already said to your Lordships, a case might arise in which there might be an "affecting" under this clause of the privileges of the minority without putting them positively in a more disadvantageous position with reference to existing grants; a case which should put them relatively in a less good position, as for example, if an added money grant were made, but made in different proportions from the existing money grants—made in proportions which did not conform to the pro-

portions of the existing money grants, giving them less and the majority more. Their existing rights and privileges would be "affected," but they would not, perhaps, be "prejudicially affected." At any rate your Lordships find that word "prejudicially" omitted, and very strong observations were made by Lord Watson on the occasion of the last argument on the utter impossibility of ignoring the fact that the word "prejudicially" was omitted and the need of giving some other interpretation to the word "affecting," in consequence of its standing without "prejudicially."

Now, these observations apply also to the second subsection of the Manitoba Act.

I turn now, my Lords, to that section of the Manitoba Act, and, in construing it, I ask your lordships to take into consideration the general principle which I submit is applicable to the interpretation of any doubtful phrases. I submit that the general view of the original British North America Act, and the general view of the Manitoba Act was to put all the provinces as near as may be on the same footing as to the rights given by the Act. As I have said before, I never have suggested anything so absurd as that it was intended by a stroke of the pen to alter the conditions which existed in different provinces on many local points. But when the British North America Act was providing for their inclusion in the federation, the general intent of that Act as indicated by its provisions, is to put the provinces as near as may be on the same footing with reference to their rights under the Act. So you find in section 93 it is "nothing in any such law shall prejudicially affect any right or privilege with regard to denominational schools which any class of persons shall have by law in the province." That is general in its application. In some of the provinces there may be no rights.

LORD WATSON.—All that I am disposed to infer from the terms of the Act of 1867, are that these conditions as to education which are embodied in section 93 were such as the provinces considered suitable for themselves at that period, and were willing to submit to—that is one of the terms of confederation upon which they were agreed. I can quite easily conceive that another province coming in at a more recent date, such as Manitoba, should stand out for terms which that province considered more suitable for their own position.

MR. BLAKE.—Doubtless. I do not dispute that proposition.

LORD WATSON.—I do not think there is any absolute desire on the part of any to inflict the same rigidly on each province. I do not see why it should be so. You may assume that they were willing to do what was just and right in each case with as near an approach as possible.

MR. BLAKE.—Very well, I am not unwilling to accept your lordship's phrase "with as near an approach as possible."

LORD WATSON.—The confederation of the provinces was the result not of compulsion but of agreement.

MR. BLAKE.—Doubtless.

LORD WATSON.—It is really a confederation by consent and there were no means of compelling it. Of course the imperial legislature might have it in their power, but it certainly never was the intention of the imperial legislature to compel it, and certainly the adjustment of the terms were left to the contracting parties.

MR. BLAKE.—They did in point of fact compel one province but they did not intend to and I have no doubt they will never compel another, having regard to the unfortunate circumstances which ensued.

LORD WATSON.—I think you must read that Act in order to see what was intended.

MR. BLAKE.—Yes, and I was reading it when your Lordship interposed. I was reading it in order to show that the clause does deal with the subject in that spirit.

LORD WATSON.—This contract was really made, I suppose, between the legislatures of Canada and the new province.

MR. BLAKE.—The Act of 1870?

LORD WATSON.—Yes.

MR. BLAKE.—Well, my Lord, there was no legislature of the province at that time. The legislature was first created under this Act.

LORD WATSON.—There is a change in the relations between the one and the other, whatever was intended by it.



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Mr. BLAKE.—Yes, that I am not at all prepared to deny.

Lord WATSON.—It cannot be said that they intended to legislate in the same terms, or they would have legislated in the same terms; they have legislated in slightly different terms—there may not be much difference. You must discover what was intended from the construction of that clause.

Mr. BLAKE.—Yes, my Lord; I am not even asking your Lordship—

The Lord CHANCELLOR.—You are on that clause?

Mr. BLAKE.—Yes, my Lord, I am endeavouring to deal with that clause.

Lord WATSON. You were asking us to extend that right of appeal by subsection 2 to a class of injuries against the privileges of minorities other than those which are provided against by section 1. That is the first point, is it not?

Mr. BLAKE.—Yes, my Lord. I must ask your Lordship's indulgence to be allowed to state some few considerations, which I will state as briefly as I can.

Lord WATSON. Certainly. You were proceeding to state those considerations, but I am afraid I interrupted you, Mr. Blake.

Mr. BLAKE.—I welcome, my Lord, all interruptions, because I quite recognize that they are the way to elicit the truth and to get at the root of the matter. I should be very sorry indeed if your Lordships thought that I objected to interruptions. But what I was trying to do was to argue that the British North America Act in itself shows in its general features, and also in this clause which I have discussed, that the Manitoba Act also shows in its general features and in this clause—I do not say an absolute determination, but a general disposition—not unnatural but eminently reasonable and eminently calculated to promote the great purposes of the union—to put the provinces as near as might be on the same footing with reference to positions created for them by the Act. I do not say there may not be some one case different, because I know of differences in which special circumstances involve special considerations. That does not in the slightest degree interfere with, nay, perhaps it rather enhances, the force of my argument as to the general intent, and that general intent is shown even in this section, which attempting to act no doubt in the legislation by the Imperial Parliament at the suggestion of the provincial legislatures, yet attempts, with one necessary exception in subsection 2 of section 93, to clothe them in general language. It deals with the rights which any persons in any province have in respect of denominational schools at the union; it deals with the case of any province having a system of separate or denominational schools, and of any province having no such system; and it puts them, each such province in the same position. Now, the Manitoba Act of 1870 makes a general provision. Section 2 of the Manitoba Act applies the British North America Act generally.

The Lord CHANCELLOR.—It is set out at the bottom of page 2 of the respondent's case before the comparative view of the sections. [*Supra*, page 12.]

Mr. BLAKE.—Yes, my Lord, I refer to that as confirming this argument.

Lord SHAND.—Was there not some argument founded on that section, as being peculiar in the way it is worded, or is it quite clear that there is no question of construction of that section?

The Lord CHANCELLOR.—There is in this way—that it depends on that section how far the Act of 1867 applies; the words are “The provisions of the British North America Act, 1867, shall, except those parts which are in terms made, or by reasonable intendment, may be held to be specially applicable to or only to affect one or more, but not the whole of the provinces now composing the Dominion, and except so far as the same may be varied by this Act, be applicable to the province of Manitoba,” And the question is whether this 22nd section is to be treated as an alternative scheme to section 93, and so as varying it, or whether you can read into section 22 so much as would not be inconsistent with it.

Mr. BLAKE.—Yes, my Lord.

Lord MACNAGHTEN.—Then there is also the exception of those that are specially applicable to one or more provinces, and this reference to separate and dissentient schools seems to be particularly applicable.

Mr. BLAKE.—I should say that that eliminated subsection 1, but I should not say that it eliminated part of sub-section 1 or 3.

The Lord CHANCELLOR.—Subsection 3 which is "Where a system of separate or dissentient schools is in any province by law at the union, or is thereafter by the legislature of the province established" would apply to New Brunswick and Nova Scotia.

Lord MACNAGHTEN.—It is specially made applicable by the Act.

Mr. BLAKE.—Subsection 3? Oh no, my Lord, subsection 3 is exhaustive, because it deals with the two possible cases.

The Lord CHANCELLOR.—It is only the second part of subsection 3 that can be applicable to Manitoba.

Mr. BLAKE.—Certainly, by your Lordships' finding.

Lord WATSON.—I do not know whether there is any canon of construction to that effect, but I have always had an impression that when there is a question whether certain statutory provisions are to be concurrent with, or are to supersede this previous legislation, it always affords an argument in favour of the intention to supersede the provisions of the earlier statute, (that is the provisions of the British North America Act) when you find that there is an identity between the provisions of the two Acts and they are repeated.

Mr. BLAKE.—Yes, my Lord, I have said from the beginning that my impression—

Lord WATSON.—If they were merely intended to qualify and alter, for the purposes of Manitoba, the provisions of the British North America Act, why repeal all these? There is not the least occasion for it.

Mr. BLAKE.—Yes, and I think that is a very strong argument. My Lord, I have already stated that my opinion is that the difference between the two clauses is that Manitoba clause is wider than the other, and I am about to endeavour—

Lord WATSON.—To the extent of the difference they must take effect, whether they supersede the provisions of the other Act, or do not.

Mr. BLAKE.—I think so, my Lord. I cannot, I think, blot them out of the statute book altogether. Then as to the Manitoba clause, as I have pointed out, the enabling clause is the same as the British North America one, and the first subsection is the same with the exception of the addition of the words "or practice." Here I may pause to say that you begin to find variations which show added tenderness for the rights of classes. Where you find a change, it is not a change indicating a determination that the rights of classes in respect of denominational schools shall be less, but that they shall be greater. The reasons for this particular difference which occurs in subsection 1 were suggested in the last case. There had been a little before, the beginning of trouble about the New Brunswick law, in which, under administrative or elastic powers, greater latitude was given in Roman Catholic communities within the province to conduct schools more according to their own views, and in which there had been a change, but it was decided that there was no law at the union, and that there was, therefore, no legal objection to the Act under subsection 1. Then came the Manitoba local trouble, to which I have alluded in connection with the acquisition of that territory by the Dominion, the rebellion, the sending of a mission to Ottawa, the discussion of terms of union suggested by a so-called legislative assembly, organized *ad hoc*, these terms containing express reference to this question and making demands upon the Dominion, and therefore the question being expressly before the consideration of the legislature. Then there was also the situation of Manitoba, or rather of that piece of Rupert's Land which became Manitoba, which was absolutely unorganized as a community before the union, and therefore had not anything in the proper sense of local laws. All those considerations were propounded on the former argument, and are now, without further repetition of them, urged as reasons for the addition of the words "or practice," giving an added right to these whom I represent. Now, that being the policy indicated by subsection 1, I ask your Lordships to say that it would be a strange thing if that policy of added tenderness, enlarged consideration for the rights of classes with respect to denominational schools, were to be reversed by the alterations made in the second sub-section. When we find a clear indication at the beginning of the clause that an enlargement of this class of rights was the object of the legislature and when we are

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told that in the second clause the legislature had departed from that policy and given a less extended set of rights than were given in that class of cases in the older Act, the first subsection sheds a light, I think, which may guide us in the exposition of the remainder, and may lead us to avoid the construction. Now, take subsection 2, "An appeal shall lie to the Governor General in Council (I will discuss the absence of the prefatory words presently) from any Act or decision of the legislature of the province or of any provincial authority." There you find the same principle of enlargement. Either it was believed that the British North America Act did not include or it was believed that it was doubtful whether or not it included the provincial legislature. It was determined to settle the question, and to settle it in whose interests? In the interest of those whom I represent. It was determined to make it abundantly plain and clear that in the case of that province, at any rate, whatever doubt might hang over the cases of the other provinces, this appeal should be from the Acts of the Legislature. If the view of Lord Watson be correct, that the words of the 93rd section do not include an Act of the legislature, then there was an enlargement of the British North America Act in favour of the province of Manitoba. If it be only that it was doubtful in the minds of the legislature, then there is a determination to make it clear that the mind of the legislature was that an appeal should lie from the Acts of the Manitoba legislature. So that we find the same intent.

LORD WATSON.—I am upon the question whether the words "provincial authority" mean the legislature of the province. My authority is not worth much, I must confess, all that I know is that I have never met with the expression "provincial authority," as intending to include the government or legislature of the country.

MR. BLAKE.—Of two things, one the right—

LORD WATSON.—You put it alternatively.

MR. BLAKE.—Yes, the Parliament of Canada thought either that it was not included, as your Lordship has suggested, or that it was doubtful whether or not it was included, and they decided if it was not included there to include it here, they decided if it was doubtful to make it clear it was included, and in either view there was a tenderness of consideration for the rights of the minority, and either an enlargement or a settlement on a sure and certain foundation of those rights and privileges, making them inclusive of a right of appeal against a legislative Act. Now, the words, "Where in any province a system of separate or dissentient schools exists by law at the union, or is thereafter established by the legislature of the province," disappear in this recasting of the clause. Why should they appear? The original clause was dealing with a number of provinces, and with different cases in those provinces, some of them hypothetical and conjectural cases. It attempts, as draughtsmen too often do, to deal with the whole of them together, and it makes provisions which enact that the section is to apply both in the case of pre-existing dissentient schools and in the case of post-union establishments. The prior parts of the British North America section had been dealing with some of the provinces only, and the language was used to make clear that now it was dealing with all, and that it included the cases of pre-union separate schools, and also of possibly post-union systems. But here, as I say, they were dealing with one province only. As the result has shown the pre-union position of Manitoba must be regarded to have been at the least doubtful. It has been judicially decided that there were no rights of this nature upon which sub-section 1 operated. Had they attempted to draw this section on the lines of subsection 3 they would have had either to affirm that in Manitoba there were pre-union rights of some kind or another and to define them, or to speak hypothetically of the question of pre-union rights. They designed not to do so. They designed to leave that question open, and so designing what could they have done? They would have had either to declare that Manitoba had pre-union rights or to say what would be a peculiar thing for the legislature to say, "In case it be found judicially that Manitoba had by law or practice before the union some rights, no rights shall be contravened without the chance of appeal, and in case any system is established afterwards those rights shall not be contravened without a like chance." But by the simple omission of both these conditions they leave an absolute generality for the application of the section. Now what is the appeal from? It is from "Any act or decision of the

legislature of the province or any provincial authority." Take subsection 1. It speaks of any right or privilege which they have by law or practice at the Union. Take subsection 2. It is an appeal which lies from "any act or decision of the Legislature of the province, or any provincial authority," and therefore you find a limitation in subsection 1 which does not exist in subsection 2. The word "any" is general, and it is not limited by any question of time. Then there is another distinction: In the Manitoba clause, as has been already pointed out, the question is not limited by the existence of separate or dissentient schools at all. The prefatory words being omitted, the right is general without suggesting the question of separate or dissentient schools. The right is absolute, therefore, to appeal from any act of the legislature, or from the decision of any provincial authority affecting any right or privilege (which must be a right or privilege created by or under the operation of the provincial legislation) of the Protestant or Roman Catholic minority. It touches therefore any right or privilege of the Protestant or Roman Catholic minority created by the legislature.

The Lord CHANCELLOR.—It really strikes me that the whole of this case will turn on two questions depending on this second subsection. First, is subsection 2 meant to do something more than afford a remedy in cases within subsection 1? Secondly, if it is, does it apply a remedy in the case of rights acquired by post-union legislation?

Lord WATSON.—I think that is the question.

The Lord CHANCELLOR.—I think those will turn out really to be the only two questions in the case.

Lord WATSON.—I should say, those two points being decided in your favour, even Mr. Haldane would find himself hampered in his argument.

Mr. HALDANE.—Subject to the question whether there has been any question of interfering with the right and privilege of the minority. That will be another question.

Lord WATSON.—I do not know how that question is one for us.

Mr. HALDANE.—We do not desire to make any admission on that point.

Lord SHAND.—Of course it is a condition of the clause coming into operation that there shall have been such a right or privilege interfered with.

Mr. HALDANE.—That is what I mean.

Lord WATSON.—I should say that a privilege established by post-union legislation would constitute such a privilege.

The Lord CHANCELLOR.—It will not be for us to consider the extent to which the decision operates.

Mr. HALDANE.—I should not ask your Lordships to do that.

Lord WATSON.—I should not like to say that it is a privilege interfered with.

Mr. HALDANE.—All we say is that your Lordships must look at the kind of Act which is complained of, in order to see whether the conditions of the appeal to the Governor General have arisen.

Lord WATSON.—I am prepared to advise the Governor General, and decide on the meaning of this clause, but I am not prepared to relieve him of the duty of considering how far he ought to interfere.

Mr. HALDANE.—That may be.

Lord WATSON.—That would be trenching upon very dangerous ground. However, we will see about that by-and-by. We must decide these two points first, or the other will never arise.

Mr. BLAKE.—My Lords, I was endeavouring to find what this appeal was, and I was pointing out to your lordships that it was an appeal from "Any act of the legislature of the province", or "any decision of any provincial authority, affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to education." I have stated already to your Lordships in connection, it is true, with section 93, but expressly stating that the observations apply to section 22, the reasoning which, as it seems to me, and as I understood, with the concurrence of some of your Lordships, render it impossible to say that the appeal provided for in subsection 2 is a sanction for subsection 1. I do not propose to trouble your Lordships with even the briefest statement by way of repetition of that argument, but all the differences which I pointed out in that connection in the Manitoba Act exist here and all the reasons, and the choice therefore that you have is between a harmonious construction—

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LORD WATSON.—What occurs to me very much on one point upon this (which is rather in your favour than otherwise) is that if upon taking the British North America Act, there seems to be in subsection 1 an absolute prohibition of certain legislation any Act would be null and *ultra vires*. No doubt subsection 3 gives no remedy against it unless it be an Act or decision of a provincial authority. If it is not referred to in that sense, then the only remedy is to have it declared null. In the other it is not null. It would not be null under the Manitoba Act. It would only be subject to appeal, and in the other provinces it would be a nullity.

THE LORD CHANCELLOR.—You would have to go for the purpose of getting rid of that which was not within their legislative power in the last resort if they would not get rid of it themselves by legislation, to the Parliament of Canada to legislate upon it.

MR. BLAKE.—It is all absolutely futile, because it is not there. It is non-existent. It is on paper, but that is all.

[*Adjourned for a short time.*]

MR. BLAKE.—Now, my Lords, I desire to refer your Lordships in connection with this particular branch of my argument to the judgment of your lordships at page 153, line 40:—

“Subsections 1, 2, and 3 of section 22 of the Manitoba Act, 1870, differ but slightly from the corresponding sub-section of section 93 of the British North America Act, 1867. The only important difference is that in the Manitoba Act in subsection 1, the words ‘by law’ are followed by the words ‘or practice,’ which do not occur in the corresponding passage in the British North America Act.”

These words were, no doubt, introduced to meet the special case of a country which had not as yet enjoyed the security of laws properly so called. It seems to me that that observation must imply the view then taken by your Lordships’ board that the British North America Act embraces in the words “provincial authority” the legislature, because certainly, if your Lordships held otherwise, it would be a very important difference; and yet your Lordships refer to the words “or practice” as the only important difference. It seems to me that these observations imply that your Lordships held that the 2nd subsection of section 22 did deal with post-union cases, inasmuch as I have shown, as I submit, that the 3rd subsection of section 93 does deal with such cases, and it would be a very important difference indeed if the 2nd sub-section of the Manitoba Act had not dealt with them.

LORD WATSON.—It comes to this, that it would rather indicate that whether an appeal is taken or not, you may have procedure that follows legislation that violates the provisions of subsection 1.

MR. BLAKE.—Unquestionably the power to legislate is restricted.

LORD WATSON.—We did not decide whether you could appeal against it.

MR. BLAKE.—I have read what your Lordships have said as to the difference between the two Acts which your Lordships limited to the introduction of the words “or practice” as being the only important difference.

LORD MAONAGHTEN.—For the purpose that we were then considering.”

MR. BLAKE.—That may be, my Lord.

I now advert to another argument which has been pressed as an aid to the adverse construction, and as properly inducing the court to limit the construction, which we desire to press on your Lordships, the argument, namely, that it is an extraordinary thing that an Act should be passed interfering with the power of a legislature to appeal or amend anything which it is given power to enact, that is an argument that has been pressed all through, and which was adverted to yesterday by one of your Lordships. On this subject I want to submit to your Lordships that the provincial legislature have no absolute and conclusive power of making effective legislation on any subject, because any law may be disallowed under the general provisions of the British North America Act by the Governor in Council, and may be thus nullified; and of course therefore there is no more conclusive power to repeal or amend than there was originally to enact.

Of course the whole of this argument has as its basis the suggestion that it is almost impossible to conceive that the provincial legislature should be authorized to make laws and not have the power of repealing.

Lord WATSON.—Subsection 2 unquestionably appears to contemplate an appeal against a complete Act, not merely an Act that is in its inception.

Mr. BLAKE.—Certainly not.

The Lord CHANCELLOR.—You are trying to meet the objection that it could not have contemplated an appeal in the case of an Act which merely repealed or modified an Act already passed.

Mr. BLAKE.—Yes. The theory presented against me is this; you acknowledge that the legislature had power to pass the primary Act; the legislature being given power to pass an Act, is it not absurd to say it should not have power to repeal, amend, or modify the Act it is empowered to pass? That is the general proposition. I am desirous of meeting, by several considerations, that argument.

Lord WATSON.—The Governor was unquestionably given some power unless he is to be impotent. It is clear when you read the whole provisions of the section that the Governor has power in some cases. A question may arise as to what those cases are, but, when the Governor is in the position to exercise the power given him, on appeal as against an Act by subsection 2, he can qualify the Act of the legislature, and, if they will not pass an Act amending it in conformity with his suggestion on appeal, it is in his power to apply to the Canadian Government to compel them to do it, or do it for them.

Mr. BLAKE.—To the Canadian Parliament to pass themselves a remedial law. I hold that in any written constitution it is the frame of the writing that—

Lord WATSON.—It is a power given undoubtedly to amend and revise.

Mr. BLAKE.—Perhaps your Lordships will think it well that I should await the argument on the other side before troubling your lordships with any further argument on this point.

Then, my Lords, I pass to the last portion of my duty, namely, the reference to the judgments in the case. At page 165 is the judgment of the Chief Justice. After stating the questions as I read them a long while ago he puts them in a concise form, and says:—

“To put it in a concise form, the questions which we are called upon to answer are whether an appeal lies to the Governor General in Council, either under the British North America Act, 1867, or under the Dominion Act establishing the province of Manitoba against an Act or Acts of the legislature of Manitoba passed in 1890, whereby certain Acts or parts of Acts of the same legislature previously passed, which had conferred certain rights on the Roman Catholic minority in Manitoba in respect of separate or denominational schools, were repealed.” Then he says, “The proper answers to be given to the questions propounded depend principally on the meaning to be attached to the words ‘any right or privilege of the Protestant or Roman Catholic minority of the Queen’s subjects in relation to education’ in subsection 2 of section 22 of the Manitoba Act. Do these words include rights and privileges in relation to education which did not exist at the union, but (in the words of section 93, subsection 3, of the British North America Act) have been thereafter ‘established by the legislature of the province,’ or is the right or privilege mentioned in subsection 2 of section 22 of the Manitoba Act the same right or privilege which is previously referred to in subsection 1 of section 22 of the Manitoba Act, viz., one which any class of persons had by law or practice in the province at the union, or a right or privilege other than one which the legislature of Manitoba itself created?”

Then his Lordship states subsection 3 of section 93 of the British North America Act, and says,

“It is important to contrast these two clauses of the Acts in question, inasmuch as there is intrinsic evidence in the latter Act that it was generally modelled on the Imperial statute, the original Confederation Act, and the divergence in the language of the two statutes is therefore significant of an intention to make some change as regards Manitoba by the provisions of the later Act. It will be observed that the British North

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America Act, section 93, subsection 3, contains the words 'or is thereafter established by the legislature of the province' which words are entirely omitted in the corresponding section (section 22, subsection 2) of the Manitoba Act."

Yes, but also are omitted the words referring to the existence of a pre-union system of separate schools. His Lordship refers to the one without the other. The omission of both neutralises the effect to be derived from the omission of one only.

"Again, the same subsection of the Manitoba Act gives a right of appeal to the Governor General in Council from the legislature of the province as well as from any provincial authority, whilst by the British North America Act, the right of appeal to the Governor General is only to be from the Act or decision of a provincial authority. I can refer this difference of expression of the two Acts to nothing but to a deliberate intention to make some change in the operation of the respective clauses. I do not see why there should have been any departure in the Manitoba Act from the language of the British North America Act unless it was intended that the meaning should be different."

The Lord CHANCELLOR.—There is a possible reason—to make it certain that it did include.

Mr. BLAKE.—Certainly. That is my contention; that they thought it was doubtful, and they wanted to make it clear.

"On the one hand it may well be urged that there was no reason why the provinces admitted to confederation should have been treated differently, why a different rule should prevail as regards Manitoba from that which by express words applied to the other provinces. On the other hand, there is, it seems to me, much force in the consideration that, whilst it was reasonable that the organic law should preserve vested rights existing at the union from spoliation or interference, yet every presumption must be made in favour of the constitutional right of a legislative body to repeal the laws which it has itself enacted."

I may say that his Lordship, as your Lordship will find, lays much stress on that proposition, the contrary of which I was about to elaborate a moment ago.

"No doubt this right may be controlled by a written constitution which confers legislative powers, and which may restrict those powers, and make them subject to any condition which the constituent legislatures may think fit to impose. A notable instance of this is, as my brother King has pointed out, afforded by the constitution of the United States according to the construction which the Supreme Court, in the well known Dartmouth College case, put upon the provision prohibiting state legislatures from passing laws impairing the obligation of contracts. It was there held, with a result which has been found most inconvenient, that a legislature, which had created a private corporation could not repeal its own enactment granting the franchise, the reason assigned being that the grant of the right of franchise of a corporation was a contract. This has in practice been got over by inserting in such Acts an express reservation of the right of the legislature to repeal its own Act. But as it is a *prima facie* presumption that every legislative enactment is subject to repeal by the same body which enacts it, every statute may be said to contain an implied provision that it may be revoked by the authority which has passed it unless the right of repeal is taken away by the fundamental law, the overriding constitution which has created the legislature itself."

The Lord CHANCELLOR.—You do not dispute that. You do not say that the legislature of Manitoba could not repeal the Act?

Mr. BLAKE.—No, my Lord.

The Lord CHANCELLOR.—Only that when it has repealed there is an appeal from its conduct or Act in repealing the Act.

Mr. BLAKE.—Yes.

The Lord CHANCELLOR.—That is all.

Mr. BLAKE.—Yes. It is possible that the repeal may be made in the end more or less inefficient by virtue of this appeal and the remedial legislation upon it, but they can repeal. I had a great number of considerations which, out of respect to this judgment, I was prepared to address to your Lordships in support of my proposition that there is no such presumption with reference to the provinces, and particularly with reference to Manitoba as to this Act as his lordship suggests here.

LORD WATSON.—I do not think this illustration throws any light whatever on it. It results from the fundamental law of this constitution that a statute interfering with the particular rights must be passed by the federal legislature. This seems to be a suggestion for evading it.

MR. BLAKE.—I do not think the federal legislature would have any such power. The decision left these charters untouchable and unattackable altogether by any legislation. Once you embraced a charter granted by the legislature within the definition of a contract, you applied the principle of the clause as to impairing the obligation of contracts, and nobody could overset it. But they got round it as people will get round things they cannot get over. After half a century or so they found a way round. Then he says :

"The point is a new one, but having regard to the strength and universality of the presumption that every legislative body has power to repeal its own laws, and that this power is almost indispensable to the useful exercise of legislative authority since a great deal of legislation is of necessity tentative and experimental, would it be arbitrary or unreasonable or altogether unsupported by analogy to hold as a canon of constitutional construction that such an inherent right to repeal its own acts cannot be deemed to be withheld from a legislative body having its origin in a written constitution unless the constitution itself by express words takes away the right."

And yet that very illustration he has given was one of a right taken away not by express words, but taken away by a construction, which may be perhaps strained construction which embraced in the word "contract" a legislative Act, namely, a charter.

LORD WATSON.—That really is a question whether a certain device is a constitutional way of getting over a constitutional difficulty. That is not the sort of question we have to deal with here at all. I do not know how it can be regarded as a strict constitutional rule.

MR. BLAKE.—This was a very easy way of over-riding all this difficulty.

LORD WATSON.—I think it would require some discussion before that point is settled, and I do not think we require to settle it now.

MR. HALDANE.—We shall not cite the Dartmouth College case.

MR. BLAKE.—No, because it would be quite against you.

LORD WATSON.—No device of that sort requires to be resorted to here.

THE LORD CHANCELLOR.—With all deference I do not see at present the applicability of this at all. The question at issue was not the power of the Manitoba legislature to repeal all these Acts. It is assumed that it has the power.

MR. BLAKE.—Yes.

THE LORD CHANCELLOR.—But the question is whether when by repeal it has altered the position of certain persons who had rights under the previous Act, there may be an appeal to the Governor in Council on the ground that that affects in a way it ought not to affect the rights of the minority.

MR. BLAKE.—Yes.

LORD SHAND.—That is subject to this observation, that under subsection 3 of the Manitoba Act, you cannot say there is an absolute right to appeal, because it says : "In case any such provincial law as from time to time seems to the Governor General in Council requisite for the due execution of the provisions of this section is not made."

MR. BLAKE.—That is afterwards.

LORD SHAND.—He can practically say the repeal is bad, "or in case any decision of the Governor General in Council on any appeal under this section is not duly executed by the proper provincial authority in that behalf, then and in every such case, and as far only as the circumstances in such case require, the Parliament of Canada may make remedial laws."

THE LORD CHANCELLOR.—He cannot say the repeal is bad ; the repeal stands. He can no doubt say that you ought not to have created the state of things you have created by the Act of repealing ; but in any case, all he can do as regards any Act, whether a repealing Act or any other Act, is to say it is an interference with the original Act of Parliament of the Legislature of Manitoba, and he can say this state of



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things will not do, and unless you by legislation will do what I think necessary to remedy it, the Parliament of Canada then has the jurisdiction to legislate within your province.

Mr. BLAKE.—If it chooses.

The Lord CHANCELLOR.—It seems to me no stronger to introduce such a power to control a state of things created by an ordinary Act, than to control a state of things which, *ex-hypothesi*, it can do created by an original Act. I say *ex-hypothesi*, that is if the second subsection is not merely a mode of enforcing what is contained in the first subsection.

Mr. BLAKE.—Of course, there are all sorts of limitations of the power of the legislature. Subsection 1 is a limitation, and when you provide this power of enacting, you may limit the power of repeal. That was not done here. The repeal itself may be modified under certain special conditions, and to a certain limited extent. Then his Lordship goes on, keeping in constant view this canon of construction that he has set up, that you must find in express terms some restriction of the power of the legislature.

"Then keeping the rule of construction just adverted to in view, is there anything in the terms of subsection 2 of section 22 of the Manitoba Act by which the right of appeal is enlarged, and an appeal from the legislature is expressly added to that from any provincial authority, whilst in the British North America Act, section 93, subsection 3, the appeal is confined to one from a provincial authority only, which expressly or necessarily implies that it was the intention of those who framed the constitution of Manitoba to impose upon its legislature any disability to exercise the ordinary powers of a legislature to repeal its own enactments."

All the phrasing of the judgment seems to give an extreme and incorrect view of the extent to which it is necessary to go, and to which we ask the court to go.

"I cannot see that it does, and I will endeavour to demonstrate the correctness of this opinion. It might well have been considered by the Parliament of the Dominion in passing the Manitoba Act that the words 'any provincial authority' did not include the legislature. Then, assuming it to have been intended to conserve all vested rights—'rights or privileges, existing by law or practice at the time of the union,' and to exclude or subject to federal control even legislative interference with such pre-existent rights or privileges, this prohibition or control would be provided for by making any act or decision of the legislature so interfering the subject of appeal to the Governor General in Council."

So that your Lordships see the application he boldly makes in order to avoid a violation of this newly-created canon of construction, is a violation of the first subsection.

Lord WATSON.—He puts this, that the intention of the Dominion Parliament was to extend the right of appeal to Acts of the legislature. He was evidently of opinion in the outset of his judgment that in the British North America Act the right of appeal was only as to the provincial authority.

The Lord CHANCELLOR.—It has this curious effect that, if he is right, and if from the wording of section 93, subsection 3, there is no appeal to the Governor from a provincial Act upon the people's rights being affected by a provincial Act, then, in the case of any of the provinces incorporated under the British North America Act, and subject to its provisions, the only remedy in case of a breach of the first subsection is to treat the law as null, because, if the third subsection does not apply to the Acts of the legislature, then there is nothing for it but to say that the law is null.

Mr. BLAKE.—No doubt.

The Lord CHANCELLOR.—Then you would have this curious result, that exactly the same provision in the same terms relating to the subject matter dealt with by the first subsection is found in the Manitoba Act, which *ex hypothesi* could make the legislation null; which is the only protection, and which is considered a sufficient protection in the British North America Act, and you add in the case of Manitoba a provision for an appeal to the Governor with all the machinery which was considered necessary in the case of the other provinces.

Mr. BLAKE.—Yes.

Lord WATSON.—That is, that in Manitoba alone has the Governor the power to take action which can in any way qualify or alter an Act passed by the legislature. The learned judge seems to distinctly express an opinion that by the earlier Act the right of appeal to the Governor General is only to be from the Act of the provincial authority, and then he says he can refer this difference of expression in the two Acts to nothing but a deliberate intention to make some change in the operation of the respective clauses. There cannot be any change in the operation of the clauses unless the Manitoba Act brings in the Governor General, whereas he was not before included in the words "provincial legislature" at all.

The Lord CHANCELLOR.—If in the British North America Act an Act of the legislature was not included, you would have this curious state of things. By subsection 2 "all the powers or privileges and duties at the union by law conferred and imposed in Upper Canada" are extended to dissentient schools in Quebec. That was a new right then acquired.

Mr. BLAKE.—Yes.

The Lord CHANCELLOR.—It was not a right existing at the union because it was a right given by that.

Mr. BLAKE.—Yes.

The Lord CHANCELLOR.—As far as I can see according to the contention that "Act" does not include an Act of the legislature, there would have been nothing to prevent an Act taking away those rights from the Protestants of Quebec, and then inasmuch as it was done by an Act of the legislature, and was not an act or decision of a provincial authority there would have been no appeal to the Governor General. What remedy would there have been?

Mr. BLAKE.—May I venture to suggest to your Lordship that inasmuch as by that subsection those Acts were extended they were Acts at the time of the union? They were not pre-union.

The Lord CHANCELLOR.—"At the union" would include what was then obtained?

Mr. BLAKE.—Yes, at the moment of the union they were applied.

The Lord CHANCELLOR.—Perhaps so.

Mr. BLAKE.—I should say that that was the intention, and I rather think your lordships would come to the conclusion that the intention did not fail. The palpable and plain object was to give those rights and to put those rights under the same protection as the rights under the analogous clauses in the province of Ontario.

The Lord CHANCELLOR.—It is a curious thing "All the powers, privileges and duties at the union by law conferred and imposed in Upper Canada," and so on, shall be, and the same are hereby, extended.

Mr. BLAKE.—"Are hereby."

The Lord CHANCELLOR.—It treats "at the union" as a time prior to "hereby."

Mr. BLAKE.—It could not be, because the union only took effect by the terms of the Act some months later on a proclamation.

The Lord CHANCELLOR.—That may carry it out. They would if comprised in this be extended at the union.

Mr. BLAKE.

If, however, the words of section 93, subsection 3: "Or is thereafter established by the legislature," had been repeated in section 22 the legislature would have been in express and unequivocal terms restrained from repealing laws of the kind in question which they had themselves enacted, except upon the condition of a right to appeal to the Governor-General.

This is a slight limitation of the too-wide phrase used by his Lordship in the former part of his judgment.

If it was intended not to do this but only to restrain the legislature of Manitoba from interfering with "rights and privileges" of the kind in question existing at the union, this end would have been attained by just omitting altogether from the clause the words "or shall have been thereafter established by the legislature of the province." This was done.

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I have already made the observation that occurs to me on this, namely, that the British North America Act contains provisions as to both pre-union and post-union rights. Both are omitted; but his Lordship seems to give potency only to the omission of the latter words.

"Next it is clear that in interpreting the Manitoba Act the words any provincial authority do not include the legislature for that expression is there used as an alternative to the legislature of the province."

I quite admit that that is true. Taking the Manitoba Act by itself, you have the two expressions, and unquestionably "any provincial authority" does not include the legislature, because it is "or" one or the other.

"It is not to be presumed that Manitoba was intended to be admitted to the union upon any different terms from the other provinces, or with rights of any greater or lesser degree than the other provinces."

LORD WATSON.—He has just demonstrated you were to be admitted on terms somewhat different.

MR. BLAKE.—But he says it is not to be presumed. I suppose his Lordship was putting forward the suggestion I made some time ago as to a general sort of presumption.

LORD WATSON.—What is the use of speculating about presumptions?

MR. BLAKE.

"Some difference may have been inevitable owing to the differences in the pre-existing conditions of the several provinces. It would be reasonable to attribute any difference in the terms of union, and in the rights of the province, as far as possible to this and by interpretation to confine any variation in legislative powers and other matters to such requirements as were rendered necessary by the circumstances and condition of Manitoba at the time of union."

LORD WATSON.—He said they would not presumably make any alteration in the different provinces except to introduce such alterations as were suitable in the case of each, or were necessary to provide for pre-existing conditions within the province which might not be the same in all. That is his argument, and therefore I suppose he goes on to argue against you that presumably they did not intend to legislate at all as to any state of things subsequently created by parliament.

MR. BLAKE.—Your Lordship will find later on he adopts a construction which altogether contradicts this premiss, that he adopts a varying construction, a construction which gives an additional variation instead of a harmonizing construction.

"Now let us see what would be the effect of the construction which I have suggested of both Acts—the British North America Act, section 93, and the Manitoba Act, section 22, in their practical application to the different provinces as regards the right of provincial legislatures to interfere with separate or denominational schools to the prejudice of a Roman Catholic or Protestant minority.

"First then, let us consider the cases of Ontario and Quebec, the two provinces which had by law denominational schools at the union. In these provinces any law passed by a provincial legislature impairing any right of privilege in respect of such denominational schools, would by force of the prohibition contained in subsection 3 of section 93 of the British North America Act, be *ultra vires* of the legislature and of no constitutional validity.

"Should the legislatures of these provinces (Ontario and Quebec) after confederation have conferred increased rights or privileges in relation to education or minorities, I see nothing to hinder them from repealing such Acts to the extent of doing away with the additional rights and privileges so conferred by their own legislation without being subject to any condition of appeal to federal authority."

I have already combatted that proposition.

LORD WATSON.—That is quite clear from the construction the learned judge put before on section 3.

MR. BLAKE.—I have already combatted the accuracy of the proposition, because I have pointed out that section 3 is quite wide enough to include the case of prior privileges conferred on Ontario and Quebec.

Lord WATSON.—Has the learned judge not made a mistake where he says "In these provinces any law passed by a provincial legislature impairing any right or privilege in respect of such denominational schools would by force of the prohibition contained in subsection 3 of section 93, &c?" I think that must be a mistake and must mean subsection 2.

Mr. BLAKE.—No, my lord.

Lord WATSON.—I doubt it.

Mr. BLAKE.—I think it must be sub-section 1.

The Lord CHANCELLOR.—He has referred to the first part of subsection 3, which deals with existing denominational schools.

Mr. BLAKE.—Well, but then, my lord, he would not say that it was made *ultra vires*, and of no constitutional validity by means of subsection 3; subsection 3 says nothing as to *ultra vires*.

The Lord CHANCELLOR.—It must be subsection 1.

Mr. BLAKE.—Yes, it is a misprint for 1. Then I have pointed out to your Lordships with regard to that paragraph below line 40 (commencing "should the legislature, &c.") that increased rights or privileges conferred by post union legislation in Ontario and Quebec on educational minorities may be well protected and are protected to the extent of the right of an appeal under subsection 3 of the British North America Act.

"What is meant by the term provincial authority? The parliament of the Dominion, as shown by the Manitoba Act, hold that it does not include the legislature," (his Lordship reflects the light of that candle on the imperial legislation)—"for in subsection 2 of section 22, they use it as an alternative expression and so expressly distinguish it from the legislature. It is true the British North America Act did not emanate from the Dominion Parliament, but nevertheless the construction which that Parliament has put on the British North America Act, if not binding on judicial interpreters, is at least entitled to the highest respect and consideration. Secondly, the words "provincial authority" are not apt words to describe the legislature, and in order that a provincial legislature should be subject to an appeal, when it merely attempts to recall its own Acts, the terms used should be apt, clear and unambiguous. To return then to the case of Ontario and Quebec, should any 'provincial authority' not including in these words the legislature, but interpreting the expression as restricted to administrative authorities (without at present going so far as to say it included courts of justice) by any Act or decision affect any right or privilege, whether derived under a law or practice existing at the time of confederation, or conferred by a provincial statute since the union still remaining unrepealed and in force, that would be subject to an appeal to the Governor General."

So that he agrees that post-union action is subject to appeal, but he says that it must not be post-union legislation, though it may be post union action under a provincial statute since the union.

Lord WATSON.—Yes, but then he introduces the important qualification on your proposition in the word "unrepealed." It must be a statute alive and in effective operation at the time.

Mr. BLAKE.—Yes.

Lord WATSON.—His conclusion is based on the introduction in the British North America Act of the words, "Or is thereafter established by the legislature of the province." The learned judge is evidently of opinion that there was some change made upon that law applicable to Manitoba, that these clauses were adjusted to fit Manitoba, and that Manitoba, whilst it gets Acts of Parliament post-union which are struck at by sub-section 1, at the same time loses the benefit of the words "or is thereafter established by the legislature of the province."

Mr. BLAKE.—In the portion I am reading his lordship is not dealing with the Manitoba Act at all.

Lord WATSON.—I may be wrong.

Mr. BLAKE.—He is dealing with the British North America Act, and not with the Manitoba Act.

Lord WATSON.—But he is showing what the British North America Act is.

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Mr. BLAKE.—He is dealing with Ontario and Quebec under the British North America Act, and not with Manitoba at all.

“Secondly, as regards the provinces of Nova Scotia and New Brunswick, those provinces not having had any denominational schools at the time of the union, there is nothing in their case for sub-section 1 of section 93 to operate upon.”

Lord WATSON.—Did they come in under section 93?

Mr. BLAKE.—Surely, four provinces come in under section 93.

The Lord CHANCELLOR.—They came in at once. They were two of the four who came in under section 93.

Mr. BLAKE.—Yes, they were two of the original provinces.

Lord WATSON.—I had forgotten that.

Mr. BLAKE.

“Should either of these provinces by after-confederation legislation create rights and privileges in favour of Protestant or Catholic minorities in relation to education, then so long as these statutes remain unrepealed and in force, an appeal would lie to the Governor General from any Act or decision of a provincial authority affecting any of such rights or privileges of a minority, but there would be nothing to prevent the legislatures of the provinces now under consideration from repealing any law which they had themselves enacted conferring such rights and privileges, nor would any Act so repealing their own enactments be subject to appeal to the Governor General in Council.”

Of course I have already pointed out the absolutely nugatory character of the power so limited. If you do not include an appeal from the legislative Act itself, as long as you acknowledge that the right of a provincial legislature to mould the law is not within the provisions of an appeal, it is to little, and I may say to no purpose, to provide this special remedy with reference to the case of other provincial authorities.

The Lord CHANCELLOR.—That is true, but, nevertheless, the legislature may have overlooked that fact and not given such an appeal, but given an appeal from the acts of authorities not meaning the legislature. I cannot help thinking that by these continual throwings together of section 93 and section 22 one only confuses and does not assist, I should have said that the logical method of dealing with it would be to look and see what section 22 gives, and then to ask whether there is anything in section 93 which, having regard to the like provision of section 22 of the Manitoba Act, must be added to the provisions of section 22.

Mr. BLAKE.—I should not at all object to that method of treating the case.

The Lord CHANCELLOR.—Because section 22 is the guiding, governing and special provision relating to Manitoba. Whatever was done under the British North America Act, that is what is done for Manitoba. Whatever is the true construction of those sections Manitoba has got, and Manitoba is to be governed by them. The question then arises, whether there is something more to be added to these, and that depends upon whether having regard to the fact that all provisions of the British North America Act are to apply to Manitoba when it becomes a member of the union unless they are varied by the Manitoba Act, the code (if I may so say) relating to education, in section 22, is to be taken as a substitute for the whole code of section 93, or whether there is something in section 93 which, not being dealt with by section 22 by way of substitution, may be added to it. But to assume that they must be meant to be practically the same, and then to make up your mind what is given by section 93, and therefore to conclude that section 22 cannot give substantially more than section 93 gives, seems to me to have a tendency to lead one off the path rather than guide one to it.

Mr. BLAKE.—I agree.

Lord WATSON.—If you come to the conclusion that both sections applied, it would be different, but when you are starting from the conclusion that only the Act of Manitoba applies to Manitoba, I think that the assumption of what the legislature presumably wanted to do in assimilating, is only calculated to mislead. The first question to determine is, what is meant by the words of the Act of 1870. If there are any ambiguities you may refer to the other.

The Lord CHANCELLOR.—The only part of the British North America Act which could be applicable, would be the latter part of subsection 3.

Mr. BLAKE.—And that is the only question that is put.

The Lord CHANCELLOR.—That would be the only part that would be applicable ; but if the effect of that would be to limit (if its operation be more limited than what is contained in subsection 2 of section 22) then subsection 2 of section 22 must prevail, because it is varied.

Mr. BLAKE.—Yes.

The Lord CHANCELLOR.—If you add to it it must only be not because it any way diminishes or detracts from what is given by section 22, subsection 2, but because it adds to it. If so, we must see what it adds.

Mr. BLAKE.—That is precisely the argument. We have all that is contained in section 22 without any limitation on the more general words by means of subsection 3 of section 93. We may possibly have something more if we find that there is in the latter subsection something extra, and not included in or excepted out of section 22.

Lord WATSON.—I think that approaching the consideration of section 22 for the first time, with a great cloud of probabilities and suppositions and analogies from other systems of Governments, is only capable of misleading. If it does not mislead it creates confusion, which is a very admirable way of misleading.

Mr. BLAKE.—Then the Chief Justice continues :—

“Thirdly, we have the case of the province of Manitoba ; here applying the construction before mentioned the provincial powers in relation to education would be not further restricted but somewhat enlarged in comparison with those of the other provinces.

“Acting upon the presumption that in the absence of express words the Act of the Dominion Parliament which embodies the constitution of the province withholding from the legislature of the province the normal right of altering or repealing its own Acts, we must hold that it was not the intention of Parliament so to limit the legislature by the organic law of the province.”

His Lordship lays down the canon of construction which he says is to govern.

The Lord CHANCELLOR.—It is what he has already laid down.

Mr. BLAKE.—Yes.

“What, then, is the result of the legislation of the Dominion as regards Manitoba? What effect is to be given to section 22 of the Manitoba Act? By the first subsection any law of the province prejudicing any right or privilege with respect to denominational schools in the province existing at the union is *ultra vires* and void. This clause was the subject, and the only subject, of interpretation in Barrett and Winnipeg, and the point there decided was that there was no such right or privilege as was claimed in that case existing at the time of the admission of the province into the union. Had any such right or privilege been found to exist, there is nothing in the judgment of the Privy Council against the inference that legislation impairing it would have been unconstitutional and void. That decision has, in my opinion, but a very remote application to the present case.”

Then he reads the second subsection of section 22 of the Manitoba Act, and says :—

“I put aside as entirely irrelevant here the question whether it was not intended by this subsection 2 to confer on the Privy Council of the Dominion appellate jurisdiction from the provincial judiciary, a question the decision of which I may say in passing might well be influenced by the consideration that the power given to Parliament by the British North America Act to create federal courts had not at the time of the passage of the Manitoba Act been exercised.”

I will not trouble your Lordships with that passage.

The Lord CHANCELLOR.—We have not to deal with that.

Mr. BLAKE.—Then

“The first subject of appeal is then, any act or decision of the legislature of the province affecting any right or privilege of the minority in respect of the matters in question. Now, if we are to hold, as I am of opinion we must hold, that it was not the intention of Parliament by these words so to circumscribe the legislative rights conferred by them on Manitoba as to incapacitate that legislature from absolutely and without any subjection to federal control, repealing its own enactments, and thus taking away rights which it had itself conferred, the right of appeal to the Governor General

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against legislative Acts must be limited to a particular class of such Acts, viz., to such as might prejudice rights and privileges not conferred by the legislature itself, but rights and privileges which could only have arisen before Confederation, being those described in the first subsection of section 22."

Your Lordships find the canon of construction is inexorable, and its application compels you to limit this to acts which interfere with pre-union rights.

The Lord CHANCELLOR.—And so, compelling you, it compels you to say that an elaborate system of appeal provided by the legislature specially applicable to Manitoba meant nothing because the circumstances to which it was applicable never could have arisen.

Mr. BLAKE.—Has no result at all.

"That we must assume, in absence of express words, that it was not the intention of Parliament to impose upon the Manitoba legislature a disability so anomalous as an incapacity to repeal its own enactments except subject to an appeal to the Governor General in Council and, possibly, the intervention of the Dominion Parliament as a paramount legislature, is a proposition I have before stated."

The Lord CHANCELLOR.—I confess myself I have a difficulty in seeing why to limit the power to make an Act which repeals is a tremendous interference with the legislature, while a power to prevent their making an Act in the first instance is no serious limitation of it. I have a little difficulty in seeing why the one is worse than the other.

Lord WATSON.—The one is a total negation of all right to legislate, the other appears to me to be a good deal within it; that the main purpose of the legislature may be maintained, but to be amended in such a way as not to trample on the rights of particular classes.

Mr. BLAKE.—In fact it cannot be interfered with except so far as it has trampled on rights.

Lord SHAND.—Which is the section which gives the Governor General a right to interfere?

The Lord CHANCELLOR.—Subsection 2 of section 22.

Lord WATSON.—In the next sentence you are about to read, the learned judge appears to me rather to change his position a little, for what it really comes to is, that if he is right he goes on to say that the right of appeal is confined to what existed at the union; if that be so, legislation, which is struck at by subsection 1, may become the subject of a process of rescission in the ordinary course, and may be cut down as *ultra vires*, or alternatively, according to the learned judge's view, may be treated as not *ultra vires*, but as *intra vires* and mendable by appeal. It seems to give an alternative.

Mr. BLAKE.—Yes, that is the view.

Lord WATSON.—I can hardly conceive that the legislature of Canada intended first to absolutely declare that particular legislation on a particular subject was a nullity, and then to allow the nullity to be the subject of appeal.

Mr. BLAKE.—An appeal on the question of its validity.

The Lord CHANCELLOR.—I suppose the other side would say, I do not know whether they would, and that is not what has been said, that it does not make it null. It is only a direction to the legislature that nothing they do is to have that effect, and the remedy, if they do legislate, is to appeal to the Governor General.

Mr. BLAKE.—That has never been said anywhere. In all the various mazes of the controversy and its various forms, that has never been put forward.

Lord WATSON.—That is a view which, if the learned Chief Justice is correct, I think is a more plausible and reasonable way of putting the case. He says it is absolutely *ultra vires*.

The Lord CHANCELLOR.—Yes, he says it is null.

Mr. BLAKE.—All throughout it has been conceded that the power of the legislature was limited by this subsection 1.

LORD WATSON.—I could quite understand if subsection 2 was a sort of warning to naughty boys not to do a particular thing, but if they do it so and so will happen. That is not an ordinary mode of legislation.

MR. BLAKE.—

"Therefore the right of appeal to the Governor General in Council must be confined to acts of the legislature affecting such rights and privileges as are mentioned in the first subsection, namely; those existing at the union when belonging to a minority, either Protestant or Catholic."

That is to say, it is more limited in the future as to the purpose of the appeal, it is more limited as to the classes that can use it, and more doubtful as to the result, and it is based on the theory that the Act is bad, except to the extent that special laws may be passed leaving out the portion which has made the Act void altogether.

LORD WATSON.—Not the Act altogether, only the provision of the Act.

MR. BLAKE.—Yes, the provision of the Act. The Act would not be void if the provision is separable. It might strike at the root of the enactment and so avoid it altogether. In the large majority of cases it has occurred that the *ultra vires* provisions in the Act of Parliament objected to affected only a part, and left the Act itself good.

"Then there would also be the right of appeal from any provincial authority. I will assume that the description "provincial authority" does not apply to the courts of justice. Then these words "provincial authority" could not, as used in this subsection 2 of section 22 of the Manitoba Act, have been intended to include the provincial legislature, for it is expressly distinguished from it being mentioned alternately with 'the legislature.' An appeal shall lie from any Act or decision of the legislature, or of any 'provincial authority,' is the language of the section. It must then apply to the provincial, executive or administrative authorities. No doubt an appeal would lie from their Acts or decisions upon the ground that some right or privilege existing at the date of the admission of the province to the federal union was thereby prejudiced. In this respect Manitoba would be in the same position as Ontario and Quebec. Unlike the cases of those provinces, and also unlike the cases of the two maritime provinces, Nova Scotia and New Brunswick, there would not, however, in the case of Manitoba, be an appeal to the Governor General in Council from the Act or decision of any provincial authority upon the ground that some right or privilege not existent at the time of the union, but conferred subsequently by legislation, had been violated. This construction must necessarily result from the right of appeal against Acts or decisions of provincial authorities, and against Acts or decisions of the legislature being limited to such as prejudiced the same class of rights or privileges. The wording of this subsection 2 shows clearly that only one class of rights or privileges could have been meant, and that the right of appeal was therefore to arise upon an invasion of these, either by the legislature or by a provincial authority. Then as the impossibility of holding " (it has become now an impossibility) "that it could have been intended to impose fetters on the legislature or to incapacitate it from repealing its own Acts requires us to limit the appeal against its enactments to Acts affecting rights and privileges existing at the union, it must follow that the right of appeal must be in like manner limited as regards acts or decisions of provincial authorities. This, however, although it makes a difference between Manitoba and the other provinces, is not a very material one. The provincial authorities would, of course, be under the control of the courts; they could therefore be compelled by the exercise of judicial authority to conform themselves to law."

LORD WATSON.—One observation that occurs to me on that reasoning is this. It may be right or wrong, but I think the learned judge overlooks the fact that in subsection 3 of section 93 the words of the section contain words of limitation which make it necessary to bring in that expression. You have not the words of limitation "existing by law at the union" in subsection 2. It is absolutely necessary—if all legislation, whether prior or post-union as you call it, was to be brought in effectively then it was absolutely necessary to put in these words "or may be after established."

MR. BLAKE.—Certainly.

LORD WATSON.—But in subsection 2 of 22 you start with the limitation of the general words.



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Mr. BLAKE.—But your Lordship places force on the omission of one set of descriptions.

Lord WATSON.—It was rendered necessary if they meant to make it necessary.

Mr. BLAKE.—If you omit both, the generality is maintained.

Lord WATSON.—I merely mention that I do not think it is conclusive, but it rather weakens the force of the criticism.

Mr. BLAKE.—

“Much greater would have been the difference between Manitoba and the other provinces, if we were to hold that, whilst as regards the provinces of Nova Scotia and New Brunswick, their legislature could enact a separate school law one session and repeal it the next without having their repealing legislation called in question by appeal, and whilst as regards Ontario and Quebec, although rights and privileges existing at confederation were made intangible by their legislatures, yet any increase or addition to such rights and privileges which these legislatures might grant could be withdrawn by them at their own pleasure subject to no federal revision, yet that the legislation of Manitoba on the same subject should be only revocable subject to the revisory power of the Governor General in Council.”

The Lord CHANCELLOR.—It might have been strange, but if the provincial authority does not mean the legislature, they have not dealt with the Act of legislature. In Manitoba they have dealt with an Act of the legislature, and therefore, however strange it may be, they have done it. They have made that difference. I am not dealing with what the extent of the rights are that are alluded to, and there is this broad and substantial difference. In the one case you are allowed to appeal under the Act of the legislature on this hypothesis, and in the other you are not, and that is brought about by the plainest enactment in the world.

Mr. BLAKE.—His result after all this strained argument and these canons of construction is this :

“I have thus endeavoured to show that the construction I adopt has the effect of placing all the provinces virtually in the same position with an immaterial exception in favour of Manitoba, and it is for the purpose of demonstrating this that I have referred to appeals from the Acts and decisions of provincial authorities which are not otherwise in question in the case before us.”

My opinion is he has aggravated the differences instead of diminishing them by the construction.

The Lord CHANCELLOR.—If he is right in his construction of the words “provincial authority,” why the legislature has made the marked distinction between them and why there should be an endeavour to fritter away such a distinction as that in the one case an appeal to the Governor General against the legislative Act is allowed, and in the other it is not, I do not know.

Mr. BLAKE.—No.

The Lord CHANCELLOR.—I should say the more you fritter it away, the more you are destroying the apparent intention of the legislature to make a difference.

Mr. BLAKE.—

“That the words ‘provincial authority’ in the third subsection of section 93 of the British North America Act do not include the legislature is a conclusion which I have reached not without difficulty. In interpreting the Manitoba Act, however, what we have to do is to ascertain in what sense the Dominion Parliament in adopting the same expression in the Manitoba Act, understood it to have been used in the British North America Act. That they understood these words not to include the provincial legislatures is apparent from section 22 of the Manitoba Act, wherein the two expressions ‘provincial authority and legislature of the province’ are used in the alternative, thus indicating that in the intention of Parliament they meant different subjects of appeal. Again, why were the words contained in the 3rd subsection of section 93 of the British North America Act, ‘or is thereafter established by the legislature of the province’ omitted, when that section was in other respects transcribed in the Manitoba Act?”

His Lordship, once again, I think for the fourth or fifth time, treats the post-union arrangements as the only thing omitted, and says that the section is in other respects the same, whereas, as his Lordship, Lord Watson, has pointed out, that inference is obviated by a reference to the provision including pre-union arrangements. The two are omitted. His Lordship thinks there was only one.

"The reason it appears to me is plain. So long as these words stood with the context they had in the British North America Act, they did not in any way tie the hands of the legislatures as regards the undoing, alteration or amendment of their own work, for the words 'any provincial authority did not include the legislature. But when in the Manitoba Act the Dominion Parliament thought it advisable for the better protection of vested rights—rights and privileges—existing at the union, to give a right of appeal from the legislature to the Governor General in Council, it omitted the words 'or is thereafter established by the legislature of the province,' with the intent to avoid placing the provincial legislature under any disability, or subjecting it to any appeal as regards the repeal of its own legislation, which would have been the effect if the third subsection of section 93 of the British North America Act had been literally re-enacted in the Manitoba Act, with the words 'of the legislature of the province' interpolated as we now find them in subsection 2 of the latter Act. This seems to me to show conclusively that the words 'rights or privileges' in subsection 2 of section 22 were not intended to include rights and privileges originating under the provincial legislation since the union, and that the legislature of Manitoba is not debarred from exercising the common legislative right of abrogating laws which it has itself passed relating to denominational or separate schools or educational privileges, nor is such repealing legislation made subject to any appeal to the Governor General in Council."

Lord SHAND.—I do not see anywhere in his lordship's opinion that he touches the question of what really would be the advantage of an appeal to the Governor in Council, in addition to an enactment that the thing itself should be null.

Mr. BLAKE.—No; I do not find anyone touches on it. I am not able to see the advantage.

Lord SHAND.—If you have an enactment that the thing is null, then the court of law would declare it so, and you do not want the necessity of an appeal to the governor.

Lord WATSON.—If you are referring to these alternatives that are given, I think it shews considerable lack of ingenuity not to be able to suggest some reason. It might be said to give to persons an option whether they wished to get rid of it *in toto*, or have it amended.

Lord SHAND.—So far as it is *ultra vires* they could proceed to the court of law to declare so much *ultra vires*.

Lord WATSON.—I think there is a certain amount of improbability about it.

Mr. BLAKE.—Then I come to Mr. Justice Fournier's judgment.

"By the statute 33 Vic., ch. 3, sec. 2 (D.) the Manitoba Act, the provisions of the British North America Act, except so far as the same may be varied by the said Act, are made applicable to the province of Manitoba in the same way and to the like extent as they apply to the several provinces of Canada, and as if the province of Manitoba had been one of the provinces united by the British North America Act. This Act was Imperialized, so to speak, by 34 Vic., ch. 38, Imp., which declares that 32 and 33 Vic., ch. 3 (D.) shall be deemed to have been valid and effectual for all purposes whatsoever."

"If we are now called upon to construe certain provisions of this statute, it seems to me that the same considerations will apply as if the provisions appeared in the British North America Act itself under the heading 'Manitoba' and therefore, as stated by the late Chief Justice of this court, in the case of *Severn vs. the Queen* [2 Can. S. C. R. 70] 'in deciding important questions arising under the Act passed by the Imperial Parliament for federally uniting the provinces of Canada, Nova Scotia and New Brunswick, we must consider the circumstances under which that statute was passed, the condition of the different provinces, their relations to one another, as well as the system of government which prevailed in those provinces and countries.' For

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convenience therefore I will place in parallel columns the sections of the Manitoba Act and the corresponding sections of the British North America Act in relation to education upon which we are required to give an answer.

"What was the existing state of things in the territory then being formed into the province of Manitoba? Rebellion, as I have already stated in the case of *Barrett vs. Winnipeg*, had thrown the people into a strong and fierce agitation, inflamed religious and national passions caused the greatest disorder, which rendered necessary the intervention of the federal government, and as matters then stood on the 2nd March, 1870, the government of Assiniboia in order to pacify the inhabitants appointed Rev. Mr. Ritchot and Messrs. Black and Scott as joint delegates to confer with the government at Ottawa, and negotiate the terms and conditions upon which the inhabitants of Assiniboia would consent to enter confederation with the provinces of Canada.

"Mr. Ritchot was instructed to immediately leave with Messrs. Black and Scott for Ottawa, in view of opening negotiations on the subject of their mission with the Government at Ottawa.

"When they arrived at Ottawa, the three delegates, Messrs. Ritchot, Black and Scott, received on the 25th April, 1870, from the Hon. Mr. Howe, the then Secretary of State for the Dominion of Canada, a letter informing them that the Hon. Sir John A. Macdonald and Sir George Cartier had been authorized by the Government of Canada to confer with them on the subject of their mission, and that they were ready to meet them.

"The Rev. Mr. Ritchot was the bearer of the conditions upon which they were authorized to consent for the inhabitants of Assiniboia to enter confederation as a separate province.

"These facts appear in exhibit L, Sessional Papers of Canada, 1893, 33 D, and in exhibit N of the same Sessional Paper we see that the following conditions, articles 5 and 7 read as follows:—

"5. That all properties, all rights and privileges possessed be respected, and the establishing and settling of the customs, usages and privileges be left to the sole decision of the local legislature.

"7. That the schools shall be separate, and that the monies for schools shall be divided between the several denominations *pro rata* of their respective populations."

"Now, after negotiations had been going on, and despatches and instructions from the Imperial Government to the Government of Canada on the subject of the entrance of the province of Manitoba into the confederation had been received, the Manitoba Constitutional Act was prepared and section 22 inserted as a satisfactory guarantee for their rights and privileges in relation to matters of education as claimed by the above articles 5 and 7. And until 1890 the inhabitants of the province of Manitoba enjoyed these rights and privileges under the authority of this section and local statutes passed in conformity therewith.

"Now, it seems by the decision of the Judicial Committee of the Privy Council in the case of *Barrett vs. Winnipeg*, that the delegates of the North-west and the Parliament of Canada although believing that the inhabitants of Assiniboia had before the union 'by law or practice, certain rights and privileges with respect to denominational schools'—for the words used, in subsection 1 of this section 22 are 'which any class have by law or practice in the province at the union'—had in point of fact no such right or privilege by law or practice with respect to denominational schools, and therefore that subsection 1 is, so to speak, wiped out of the Constitutional Act of Manitoba, having nothing to operate upon.

"But if the parties agreeing to these terms of union were in error in supposing they had by law or practice, prior to the union, certain rights or privileges, they certainly were not in error in trusting that the provincial legislature" (as the legislature of Quebec did after confederation for the Protestant minority) "which was being created would forthwith settle and establish their usages and privileges and secure by law and in accordance with articles 5 and 7 of the bill of rights, separate schools for the Catholics of Manitoba, and would make provision so that the moneys would be divided between the Protestant and Catholic denominations *pro rata* to their respective populations. Then once estab-

lished and secured by their own local legislature in accordance with the terms of the union, is not the minority perfectly within the spirit and the words of the Constitutional Act in contending that rights and privileges so secured by an Act of the Legislature are at least in the same position as rights secured to minorities in the provinces of Quebec and Ontario under section 93 of the British North America Act and that subsections 2 and 3 were inserted in the Act so that they might be protected by the Governor General against any subsequent legislation by either a Protestant or Catholic majority in after years?

"In the present reference being again called upon to construe this same section 22, but as if subsection 1 was repealed or wiped out by judicial authority, we must, I think, take into consideration the historical fact that the Manitoba Act of 1870 was the result of the negotiations with parties who agreed to join and form part of the Confederation as if they were inhabitants of one of the provinces originally united by the British North America Act, and we must credit the Parliament of Canada with having intended that the words 'an appeal shall lie to the Governor General in Council from any act or decision of the legislature of the province or of any provincial authority affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to education' (which are also the words used in the 93rd section of the British North America Act) should have some effect. The only meaning and effect I can give them is that they were intended as an additional guarantee or protection to the minority, either Protestant or Catholic, whichever it might happen to be, that the laws which they knew would be enacted immediately after the union, by their own legislature in reference to education, would be in accordance with the terms and conditions upon which they were entering the union, this guarantee was given so as to prevent later on, interference with their rights and privileges by subsequent legislation without being subject to an appeal to the Governor General in Council should such subsequent Act of the legislature affect any right or privilege thus secured to the Protestant or Catholic minority by their own legislature.

"In my opinion the words used in subsection 2 'an appeal shall lie from any Act of the legislature' necessarily mean an appeal from any statute which the legislature has power to pass in relation to education, if *at the time* of the passing of such statute there exists by law any right or privilege enjoyed by the minority. There is no necessity of appealing from statutes which are *ultra vires* for the assumption of any unauthorized power by any local legislature under our system of government is not remedied by appeal to the Governor General in Council, but by courts of justice.

"Then, as to the words 'right or privilege' in this subsection, they refer to some right or privilege in relation to education to be created by the legislature which was being brought into existence, and which, once established, might thereafter be interfered with at the hand of a local majority so as to affect the Protestant or Catholic minority in relation to education. It is clear, therefore, that the Governor General in Council has the right of entertaining an appeal by the British North America Act as well as by subsection 2 of section 22 of the Manitoba Act. He has also the power of considering the application upon the merits. When the application has been considered by him upon its merits if the local legislature refuses to execute any decision to which the Governor General has arrived in the premises, the Dominion Parliament may then under subsection 3 of section 22 of the Manitoba Act, pass remedial legislation for the execution of his decision.

"In construing, as I have done, the words of subsection 2 of the 22nd section of the Manitoba Constitutional Act, which is, as regards an appeal to the Governor General in Council, but a reproduction of subsection 3 of section 93 of the British North America Act, except that the clear, unequivocal and comprehensive words 'from any act or decision of the legislature of the province' are added, I am pleased to see that I am but concurring in the view expressed by Lord Carnarvon in the House of Lords on the 19th February, 1867, when speaking of this right of appeal to be granted to minorities when a local Act might affect rights or privileges in matters of education, as the following extract from *Hansard's Parliamentary Debates*, 3rd Series, February 19, 1867, shows:—'Lord Carnarvon.—Lastly, in the 93rd clause, which contains the ex-

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ceptional provisions to which I referred, your Lordships will observe some rather complicated arrangements in reference to education. I need hardly say that the great question gives rise to nearly as much earnestness and division of opinion on that as on this side of the Atlantic. This clause has been framed after long and anxious controversy in which all parties have been represented, and on conditions to which all have given their consent. It is an understanding which, as it only concerns the local interests affected, is not one that Parliament would be willing to disturb, even if in the opinion of parliament it were susceptible of amendment, but I am bound to add, as the expression of my own opinion, that the terms of agreement appear to me to be equitable and judicious. For the object of the clause is to secure to the religious minority of one province the same rights and privileges and protection which the religious minority of another province may enjoy. The Roman Catholic minority of Upper Canada, the Protestant minority of Lower Canada, and the Roman Catholic minority of the maritime provinces, will thus stand on a footing of entire equality. But in the event of any wrong at the hand of the local majority, the minority have a right of appeal to the Governor General in Council and may claim the application of any remedial laws that may be necessary from the central parliament of confederation.

"This being so, the next point of inquiry is whether the Acts of 1890 of Manitoba affect any right or privilege secured to the Catholic minority in matters of education after the union, for we have nothing to do with the inquiry whether the Catholic minority had at the time of the union any right by law or practice, that point as I have already stated having been decided adversely to their contention by the decision of the Privy Council in the case of *Barrett vs. Winnipeg*. By referring to the legislation from the date of the union till 1890, it is evident that the Catholics enjoyed the immunity of being taxed for other schools than their own, the right of organization, the right of self-government in this school matter, the right of taxation of their own people, the right of sharing in government grants for education and many other rights under the statute of a most material kind. All these rights were swept away by the Acts of 1890, as well as the properties they had acquired under these Acts with their taxes and their share of the public grants for education. Could the prejudice caused by the Acts of 1890 be greater than it has been? The scheme that runs through the Acts of 1871 and 1881 up to 1890, as Lord Watson of the Privy Council is reported to have so concisely stated on the argument of the case of *Barrett vs. Winnipeg* (which is printed in the Sessional Papers of Canada, 1893) appears to have been that 'no rate-payer shall be taxed for contribution towards any school except one of his own denomination'; and I will add that this scheme is clearly pointed out in articles 5 and 7 of the conditions of union above already referred to which were the basis of the Constitutional Act.

"Now, is this a legal right or privilege enjoyed by a class of persons? In this case the immunity from contributing to any schools other than one of its own denomination was acquired by the Catholic minority *quod* Catholics by statute, and Catholics certainly at the time the legislation was passed represented a class of persons comprising at least one-third of the inhabitants of the province of Manitoba. It is unnecessary, I think, after reading the able judgments delivered in the case of *Barrett vs. Winnipeg* to show by authority that the right so acquired by the Catholic minority after the union by the Act of 1871 was a legal right, and that, if it is shown by subsequent legislation enacted by the legislature of the province of Manitoba that there has been any interference with such right, then I am of opinion that such interference would come within the very words of this section 22 of the Manitoba Constitutional Act, which gives a right of appeal to the Governor General in Council from 'any Act of the legislature (words which are not in section 93 of the British North America Act, but are in subsection 2 of section 22 of the Manitoba Act) affecting a right acquired by the Roman Catholic minority of the Queen's subjects in relation to education.'

"The only other question submitted to us I need refer to is the 4th question.

"Does subsection 3 of section 93 of the British North America Act, 1867, apply to Manitoba? The answer to this question is to be found in the second section of the Manitoba Act, 32 and 33 Vic., cap. 3, which says 'from and after the said date

the provisions of the British North America Act shall apply, except those parts thereof which are in terms made, or by reasonable intendment, may be held to be specially applicable to, or only to affect one or more, but not the whole of the provinces now comprising the Dominion and except so far as the same may be varied by this Act and be applicable to the province of Manitoba in the same way and to the like extent as they apply to the several provinces of Canada, and as if the province of Manitoba had been one of the provinces originally united by the said Act.' ~~The Manitoba Act has not varied the British North America Act, though subsection 2 of section 22 has a somewhat more comprehensive wording than subsection 3 of section 93 of the British North America Act in relation to appeals in educational matters.~~ A statute does not vary or alter if it merely makes further provision, it is simply an addition to it. The second sub-section is wider but does not vary at all from the third sub-section of the 93rd section of the British North America Act, save in this that there is an addition to it, that it includes it and goes beyond it by adding the words 'and from any Act of the legislature.' The third subsection of the British North America Act provides that in two cases there is to be an appeal. There is nothing inconsistent in the Manitoba Act which says that in *all* cases there shall be an appeal, it goes beyond the British North America Act, it does not vary it, it leaves it as it is and adds to it.

"We see by the opinion expressed by some of the lords of the Privy Council how far the right of appeal extends under section 2 of the Manitoba Act, for in the argument on that question before the Privy Council (Sessional Papers Nos. 33a, 33b, 1893) we read at page 134, that when Mr. Ram, counsel, was arguing on behalf of Mr. Logan in the case of *Winnipeg vs. Logan* he said, 'I venture to think that under sub-section 2 what was contemplated was this, that apart from any question *ultra vires* or not, if a minority said, 'I am oppressed' that was the party who had to come under that subsection 2 and appeal to the government.'

"Lord HANNEN.—It has a right to appeal against *any* Act of the legislature.

"Lord SHAND.—Even *ultra vires*.'

"This being also my opinion, I will only add that, having already stated that I think that we should read the Manitoba Constitutional Act in the light of the British North America Act, and that it was intended as regards all civil rights in educational matters to place the province of Manitoba on the same footing as the provinces of Quebec and Ontario, and that subsection 1 of section 22 having been enacted for the purpose of protecting rights held by law or practice prior to the union, but which have been declared not to exist. I am of opinion that subsection 2 of section 22 of the Manitoba Constitutional Act provides for an appeal to the Governor General in Council by memorial or otherwise, on the part of the Roman Catholic minority, contending that the two Acts of the Legislative Assembly of Manitoba passed in 1890 on the subject of education, are subversive of the rights and privileges of the Roman Catholic ratepayers not to be taxed for contribution towards schools, except one of their own denomination, and that such right has been acquired by statute subsequent to the union.

"For the above reasons I answer the questions submitted by His Excellency the Governor General in Council, as follows;—

"(1.) Is the appeal referred to in the said memorials and petitions and asserted thereby, such an appeal as is admissible by subsection 3 of section 93 of the British North America Act, 1867, or by subsection 2 of section 22 of Manitoba Act, 33 Vic., 1870, cap. 3, Canada? Yes.

"(2.) Are the grounds set forth in the petitions and memorials such as may be the subject of appeal under the authority of the subsections above referred to, or either of them? Yes.

"(3.) Does the decision of the Judicial Committee of the Privy Council in the cases of *Barrett vs. The City of Winnipeg* and *Logan vs. The City of Winnipeg* dispose of or conclude the application for redress, based on the contention that the rights of the Roman Catholic minority which accrued to them after the union under the statutes of the province have been interfered with by the two statutes of 1890, complained of in the said petitions and memorials? No.

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"(4.) Does subsection 3 of section 93, of the British North America Act, 1867, apply to Manitoba? Yes.

"(5.) Has His Excellency the Governor General in Council, power to make the declarations or remedial orders which are asked for in the said memorials and petitions, assuming the material facts to be as stated therein, or has His Excellency the Governor General in Council any other jurisdiction in the premises? Yes.

~~"(6.) Did the Acts of Manitoba, relating to education, passed prior to the session of 1890 confer on or continue to the minority a 'right or privilege in relation to education' within the meaning of subsection 2 of section 22 of the Manitoba Act, 'or establish a system of separate or dissentient schools' within the meaning of subsection 3 of section 93 of the British North America Act, 1867, if said section 93 be found applicable to Manitoba, and if so, did the two Acts of 1890 complained of, or either of them, affect any right or privilege of the minority in such a manner that an appeal will lie thereunder to the Governor General in Council? Yes."~~

Then Mr. Justice TASCHEREAU says:—

"I doubt our jurisdiction on this reference or consultation. Is section 4, of 54 & 55 Vic., ch. 25, which purports to authorize such a reference to this court for hearing 'or' consideration *intra vires* of parliament? By which section of the British North America Act is parliament empowered to confer on this statutory court any other jurisdiction than that of a court of appeal under section 101 thereof? This court is evidently made, in the matter, a court of first instance, or rather I should say, an advisory board of the federal executive substituted *pro hac vice* for the law officers of the crown and not performing any of the usual functions of a court of appeal, nay, or any court of justice whatever. However, I need not, at present, further investigate this point. It has not been raised, and a similar enactment to the same import has already been acted upon. That is not conclusive, it is true; but our answers to the questions submitted will bind no one, not even those who put them, nay, not even those who give them, no court of justice, not even this court. We give no judgment, we determine nothing, we end no controversy; and whatever our answers may be, should it be deemed expedient, at any time by the Manitoba executive, to impugn the constitutionality of any measure that might hereafter be taken by the federal authorities against the provincial legislation, whether such measure is in accordance with or in opposition to the answers to this consultation, the recourse, in the usual way, to the courts of the country remains open to them. That is, I presume, the consideration, and a very legitimate one, I should say, upon which the Manitoba executive acted by refraining to take part in the argument on the reference, a course that I would not have been surprised to see followed by the petitioners, unless indeed they are assured of the interference of the federal authorities, should it eventually result from this reference that constitutionally the power to interfere with the provincial legislation as prayed for exists. For if as a matter of policy, in the public interest, no action is to be taken upon the petitioners' application, even if the appeal lies, the futility of these proceedings is apparent.

"Assuming, then, that we have jurisdiction, I will try to give as concisely as possible the reason upon which I have based my answers to the questions submitted. In the view I take of the application made to his Excellency the Governor General in Council, by the Catholics of Manitoba I think it better to introvert the order of the questions put to us, and to answer first the fourth of these questions, that is, whether subsection 3 of section 93 of the British North America Act applies to Manitoba. To that question the answer, in my opinion, must be in the negative. That section of the British North America Act applies to every one of the provinces of the Dominion, with the exception, however, of Manitoba, for the reason that, for Manitoba, in its special charter, the subject is specifically provided for by section 22 thereof. The maxims *lex posterior derogat priori* and *specialia generalibus derogant* have both here, it seems to me, their application. If it had been intended to purely and simply extend the operations of that section 93 of the British North America Act to Manitoba, section 22 of its charter would not have been enacted. The course since pursued for British Columbia and Prince Edward Island would have been followed. But where we see a different course pursued we have

to assume that a difference in the law was intended. I cannot see any other reason for it and none has been suggested. True it is that words 'or practice' in subsection 1 of section 22 are an addition in the Manitoba charter which the Dominion Parliament desired to specially make to the analogous provision of the British North America Act, but that was no reason to word subsection 2 thereof so differently as it is from subsection 3 of section 93 of the British North America Act. Then this difference may be easily explained, though its consequences may not have been foreseen. I speak cautiously and mindful that I am not here allowed to controvert or even doubt anything that has been said on the subject by the Privy Council. It is evident, to my mind, that it was simply because it was assumed by the Dominion Parliament that separate or denominational schools had previously been in that region, and were then, at the union, the basis and principle of the educational system; and with the intention of adapting such system to the new province, or rather of continuing it as found to exist, that in the Union Act of 1870 the words of subsection 3 of section 93 of the British North America Act: 'Where in any province a system of separate or dissentient schools exists by law, at the union, or is thereafter established by the legislature of the province'—were stricken out as unnecessary and inapplicable to the new province. And I do not understand that the Privy Council denies to the petitioners their right to separate schools. However, the reason of this difference between the constitution of the province and the British North America Act cannot, in my view of the question, bring much assistance in the present investigation; the fact remains—whatever may have been the reason for it—that no appeal is given to the minority in Manitoba in relation to the rights and privileges conceded to them since the union as distinguished from those in existence at the union. They have no rights but what is left to them by the judgment in the Barrett case; and, if I do not misunderstand that judgment, the appeal they now claim to (*sic*) is not, as a logical inference, thereby left to them.

"And in vain now, to support their appeal, would they urge that the statute so construed is unreasonable, unjust, inconsistent and contrary to the intentions of the law giver; uselessly would they contend that to force them to contribute pecuniarily to the maintenance of the public non-Catholic schools is to so shackle the exercise of their rights as to render them illusory and fruitless; or that to tax not only the property of each and every of them individually, but even their school buildings for the support of the public schools is almost ironical; uselessly would they demonstrate the utter impossibility for them to efficaciously provide for the organization, maintenance and management of separate schools, and the essential requirements of a separate school system without statutory powers and the necessary legal machinery; ineffectively would they argue that to concede their right to separate schools and withal deprive them of the means to exercise that right is virtually to abolish it, or to leave them nothing of it but a barren theory. With all these and kindred considerations, we here, in answering this consultation, are not concerned. The law has been authoritatively declared to be so, and with its consequences we have nothing to do. *Dura lex, sed lex, judex non constituitur ad leges reformandas. Non licet iudicibus de legibus judicare, sed secundum ipsas.* The Manitoba legislation is constitutional, therefore it has not affected any of the rights or privileges of the minority; therefore the minority has no appeal to the federal authority. The Manitoba legislature had the right and power to pass that legislation, therefore any interference with that legislation by the federal authority would be *ultra vires* and unconstitutional."

The Lord CHANCELLOR.—That is a very wide extension, as it seems to me, of rather a broad interpretation of what was decided by this Board in that case.

Mr. BLAKE.—Yes, I quarrel very much with this judgment.

Lord WATSON.—I think it might be more briefly stated in the proposition—A minority has no rights.

Mr. BLAKE.—His Lordship did not like to say your Lordships had decided that in so many words.

The Lord CHANCELLOR.—Then he goes on to discuss that.



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LORD WATSON.—It is applicable to either view of the case. As I read these remarks they are equally applicable.

MR. BLAKE.—Then they must be very admirable remarks.

"I take up now the first of these questions. Does the right of appeal claimed by the petitioners exist under section 22 of the Manitoba Act? And here again, in my opinion, the answer must be in the negative for the reason that it is conclusively determined by the judgment of the Privy Council that the Manitoba legislation does not prejudicially affect any right or privilege that the Catholics had by law or practice at the union, and if their rights and privileges are not affected there is no appeal."

THE LORD CHANCELLOR.—I suppose he is right in saying that the decision does not go that length if subsection 2 only applies to Acts affecting rights existing prior to the union.

MR. BLAKE.—I quite agree.

THE LORD CHANCELLOR.—And that, I think, is his hypothesis?

MR. BLAKE.—I think so. His hypothesis is that the section we are now dealing with has to do only with rights and privileges existing at the union.

LORD WATSON.—The learned judge is in error in saying that the judgment of the Privy Council determines anything to the effect he states. It would be conclusive to that effect I quite admit if you add to the judgment of the Privy Council in the Winnipeg case the further decision that the provision as to appeals under subsection 2 against Acts of legislature only applies to those Acts of the legislature which fall under subsection 1.

MR. BLAKE.—Yes.

LORD WATSON.—Unfortunately, we did not decide that. That is an open question.

LORD SHAND.—I think you get in the next sentence exactly what the Lord Chancellor has said.

MR. BLAKE.—

"The rights and privileges mentioned in subsection 2 of section 22 are the same rights and privileges that are mentioned in subsection 1, that is to say, those existing at the union upon which subsection 3 provides for the interference in certain cases of His Excellency the Governor General in Council, and it is as to such rights and privileges only that an appeal is given. The appeal given in the other provinces by section 93 of the British North America Act as to the rights and privileges conferred on a minority after the union is, as I have remarked, left out of the Manitoba constitution. Assuming, however, that the Manitoba constitution is wide enough to cover an appeal by the minority——"

Here I quarrel very much with his Lordship's judgment—

"upon the infringement of any of their rights or privileges created since the union, or assuming that section 93 of the British North America Act subsection 3 applies to Manitoba, I would be inclined to think that, by the *ratio decidendi* of the Privy Council there are no rights or privileges of the Catholic minority that are infringed by the Manitoba legislation so as to allow of the exercise of the powers of the Governor in Council in the matter as the Manitoba statutes must now be taken not to prejudicially affect any right or privilege whatever enjoyed by the Catholic community."

Your Lordships decided no such thing. Your Lordships decided that they did not affect any rights or privileges enjoyed by the Catholic community at the time of the union, which was the only question before you, and was so stated by your Lordships.

LORD WATSON.—What the learned judge means to say, rightly or wrongly, is that that which was not a right or privilege before cannot be a right or privilege after. It does not at all follow there would not have been a right or privilege if there had been prior to 1870 the same legislation in Manitoba that there was between 1870 and 1890.

THE LORD CHANCELLOR.—I should have said reading the judgment on this part of that previous case that if there had been such legislation the *ratio decidendi* would have indicated that the Act of 1890 would have been void.

MR. BLAKE.—Certainly, that is the whole argument of the case, and I hold that that is to be deduced from the statement by your Lordships of the character of the legislation.

"It would seem, no doubt, by the language of both section 93 of the British North America Act and of section 22 of the Manitoba charter, that there may be provincial legislation which though *intra vires*, yet might affect the rights or privileges of the minority so as to give them the right to appeal to the Governor in Council. For it cannot be of *ultra vires* legislation that an appeal is given. And the petitioners, properly disclaiming any intention to base their application on the unconstitutionality of the Manitoba statutes, even for infringement of rights conferred upon them since the union, urge that though the Privy Council has determined that the legislation in question does not affect the rights existing at the union so as to render it *ultra vires*, yet that it does affect the rights conferred upon them by the provincial legislature since the union, so as to give them, though *intra vires*, an appeal to the Governor in Council. I fail to see, however, how this ingenious distinction, for which I am free to admit both the British North America Act and the Manitoba special charter give room, can help the petitioners. I assume here that the petitioners have an appeal upon the rights and privileges conferred upon them since the Union as contra-distinguished from the rights previously in existence. The case is precisely the same as if the present appeal was as to their rights existing at the union. They might argue that though the Privy Council has held this legislation to have been *intra vires*, yet their right to appeal subsists, and in fact exists because it is *intra vires*. But what would be this ground of appeal? Because the legislation affects the rights and privileges they had at the union. And the answer would be one fatal to their appeal, as it was to their contentions in the Barrett case that none of these rights and privileges have been illegally affected. Now, the rights and privileges they lay claim to under the provincial legislation anterior to 1890 are, with the additions, rendered necessary by the political organization of the country to enable them to exercise these rights, the same in principle that they had by practice at and before the union, and which were held by the Privy Council not to be illegally affected by the legislation of 1890."

The Lord CHANCELLOR.—This board said there was really no practice before the union which could be said to give any right to avoid taxation.

Mr. BLAKE.—It was all voluntary and by individual action.

The Lord CHANCELLOR.—Any practice in the nature of law governing the school rates.

Mr. BLAKE.—That was the trouble. There was no legal organization of any kind but the exercise of a common right of A and B and C, who were of one faith, to subscribe together for the education of their children.

Lord WATSON.—There was no positive law, and there was no practice having the force of law.

Mr. BLAKE.—That was all.

The Lord CHANCELLOR.—And further what was said was that whatever the effect of the practice was that was left untouched, that if all that existed was power to subscribe to schools of their own, and pay for them, that power remained—that is the ground.

Mr. BLAKE.—That is the ground of the decision. But you have a series of statutes now creating the rights and privileges your Lordships have described, and you have got an Act which your Lordships have described in that judgment as sweeping away all those rights and privileges, and yet his Lordship finds himself constrained by the effect of the decision of the Privy Council to decide obviously contrary to what would have been his view otherwise.

The Lord CHANCELLOR.—He did not like the decision of the Privy Council.

Mr. BLAKE.—That is tolerably obvious.

The Lord CHANCELLOR.—And it may have looked blacker to him than it really was.

Lord WATSON.—It is not quite correct to say that what the board held in the Winnipeg case was that these privileges and rights at the union had not been illegally affected. What the board determined was that they had at that date no privileges which were capable of being affected.

Mr. BLAKE.—I am not certain about that.

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Lord WATSON.—They were not possessed of any privileges within the meaning of subsection 2.

Mr. BLAKE.—It was not before your Lordships to decide, but a question of this kind might have arisen. Supposing there had been subsequent legislation prescribing voluntary denominational schools. It is very absurd to suppose it, for the considerations I have already stated; but I can conceive a right or privilege of that kind being violated if we were not living at the close of the nineteenth century. Then he says:—

“The petitioners, it seems to me, would virtually renew their impeachment of the constitutionality of the Manitoba legislation of 1890 upon another ground than the one taken in the Barrett case, namely upon the rights conferred upon them since the union, whilst the controversy in the Barrett case was limited to their rights as they existed at the union. But that legislation, as I have said, is irrevocably held to have been *intra vires*, and it is not to the petitioners to argue the contrary even upon a new ground. And if it is *intra vires* it cannot be that it has illegally affected any of the rights or privileges of the Catholic minority, though it may be prejudicial to such right. And if it has not illegally affected any of those rights or privileges they have no appeal to the Governor in Council.

“It has been earnestly urged, on the part of the petitioners, in their attempt to distinguish the two cases, that in the Barrett case it was only their liability to assessment for the public schools that was in issue, and consequently that the decision of the Privy Council, binding though it be, does not preclude them from now taking an appeal from the provincial legislation of 1890, the ground that this legislation sweeps away the statutory powers conceded to them under the previous statutes, and without which their establishment and administration of a separate school system is impracticable. But here again it must necessarily be on the ground that these rights and privileges or some of their rights and privileges have been prejudicially affected, that they have to rest their case, and from that ground they are irrevocably ousted by the judgment of the Privy Council, where not only the assessment clauses thereof were directly in issue, but each and every one of the enactments of the statutes impugned, were, as I read that judgment, held to have been and to be *intra vires*.”

Of course they were.

The Lord CHANCELLOR.—There is some little inconsistency, is there not, because I think in a previous part the learned judge said that the appeal was in cases where it was *intra vires*, but it was not confined to that case.

Mr. BLAKE.—There is some part of his judgment which seems to be a sort of excrescence in which he does say that:—

“Were it otherwise, and could the question be treated as *res integra*, it might have been possible for the petitioners to establish that they are entitled to the appeal claimed on that ground, namely, that the Statutes of 1890, by taking away the rights and privileges of a corporate body vested with the powers essential to the organization and maintenance of a school system that has been granted to them by the previous statutes are subversive of those rights and privileges and prejudicially affect them.

“They might cogently urge in support of that proposition, and might perhaps have succeeded to convince me, that to take away a right, to cancel a grant, to repeal the grant of a right, to revoke a privilege, prejudicially affects that grant, prejudicially injuriously affects that privilege. They might also perhaps have been able to convince me that the license to own real estate, the authorization to issue debentures, to levy assessments, the powers of a corporation that had been granted to them, constituted for them rights and privileges. And to the objection that no appeal lies under section 22 of the Manitoba charter, but upon rights existing at the union, they might perhaps have successfully answered, either that section 93 of the British North America Act extends to Manitoba, or, if not, that the legislation of Manitoba in the matter, since the union, prior to 1890, should be construed as declaratory of their right to separate schools, or a legislative admission of it, a legislation required merely to secure to them the means whereby to exercise that right and that consequently their appeal relates back to a right existing at the Union, so as to bring it, if necessary, under the terms of section 22 of the Manitoba Union Act.

"However, from these reasons the petitioners are now precluded. If any of their rights and privileges had been prejudicially affected, this legislation would be *ultra vires*, and it is settled it is not *ultra vires*. And the argument against their contention is very strong, that it being determined that it would have been in the power of the Manitoba Legislature to establish in 1871, at the outset of the political organization of the province, the system of schools that they adopted in 1890 by the statutes which the petitioners now complain of, it cannot be that by their adopting and regulating a system of separate schools, though not obliged to do so, they forever bound the future generations of the province to that policy, so that as long at least as there would be even only one Roman Catholic left in the province, the legislature should be, for all time to come, deprived of the power to alter it, though the constitution vests them with the jurisdiction over education in the province."

There again, of course, there is a most extreme view taken of the meaning to be attached to the legislation. The appeal is not taken away. The appeal is subsisting.

Lord WATSON.—This is merely the conclusion, granting his premises.

Mr. BLAKE.—Yes, my Lord.

"To deny to a legislative body the right to repeal its own laws, it may be said, is so to curtail its powers that an express article of its constitution must be shown to support the proposition, it is not one that can be deductively admitted. If this legislation of 1890, it may still be further argued against the petitioners' contentions had been adopted in 1871, it would, it must now be conceded, have been constitutional, and that being so, would the Catholic minority then, in 1871, have had a right of appeal to the Governor in Council? Certainly that is partly the same question in a different form. But it demonstrates, put in that shape, that the petitioners have now no right of appeal."

Of course things are just the reverse.

Lord SHAND.—The general ground of the judgment seems to be the decision of this Board.

Mr. BLAKE.—Yes, it is perfectly obvious that if it had not been for an inaccurate conclusion—

Lord WATSON.—What is given in one subsection is entirely different from what is given in the other. It is not in the nature of a privilege, but you have to give it to them first. Is there nothing given you by law?

Mr. BLAKE.—It is quite a different thing not to give, and having given to take away.

Lord WATSON.—It is quite a different thing getting a privilege and getting none.

Mr. BLAKE.—Then Mr. Justice Gwynne sets out the questions and states the memorials and petitions at very great length. Perhaps your Lordships would hardly desire me to trouble you with them. That goes on at page 190, where he makes a statement:—

"The learned members of the Judicial Committee of the Privy Council who advised Her Majesty upon the Appeals in the cases of *Barrett vs. Winnipeg* and *Logan vs. Winnipeg*, adopting the evidence of the Archbishop of St. Boniface as to the rights and privileges in relation to denominational schools enjoyed by Roman Catholics before the passing of the Manitoba Act in the territory by that Act erected into the province of Manitoba, say in their report:—"

Lord WATSON.—He merely gives an account of it.

Mr. BLAKE.—Yes, my Lord. Then he adds—

"The judgment then summarily rejects the contention that the public schools created by the Acts of 1890 are in reality Protestant schools, and concludes in declaring and adjudging that those Acts do not prejudicially affect the rights and privileges enjoyed by Roman Catholics in the territory now constituting the province of Manitoba, prior to the passing of the Manitoba Act, taking these rights and privileges to have been as represented by the Archbishop of St. Boniface, and even assuming them to have been secured or conferred by positive law, and so that they are not enacted in violation of section 22 of the Manitoba Act, but are within the exclusive jurisdiction of the provincial legislature to enact.

"Their Lordships of the Privy Council in *Barrett vs. Winnipeg*, and *Logan vs. Winnipeg* put a construction upon this section 22, which independently is to my mind

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sufficiently apparent, but which I quote as a judicial enunciation of their Lordships' opinion. They say:—

“ ‘ Their Lordships are convinced that it must have been the intention of the legislature to preserve every legal right or privilege with respect to denominational schools which any class of persons practically enjoyed at the time of the union.’

“ The language of the section is, I think, sufficiently clear upon that point and all its subsections are enacted for the purpose of securing the single object, namely, the preservation of existing rights.”

Lord WATSON.—The then existing rights.

Mr. BLAKE.—Yes ; that is the key note of his Lordship's judgment. Then he proceeds to state the section, and says:—

“ If any law should be passed in violation of the qualification contained in the first subsection upon the general jurisdiction conferred by the section to make laws in relation to education, that is to say in case any Act should be passed by the provincial legislature prejudicially affecting any right or privilege with respect to denominational schools which any class of persons had by law or practice in the province at the union, such an Act would be *ultra vires* of the provincial legislature to enact and would therefore have no force, and, as it was to preserve these rights and privileges with respect to denominational schools, whatsoever they were, which existed at the time of the union, that the 22nd section was enacted, it is obvious, I think, that it is against such an Act of the legislature and against any decision of any provincial authority acting in an administrative capacity prejudicially affecting any such right, that the appeal is given by the second subsection, and so likewise the remedies provided in the third subsection relate to the same rights and privileges, and to the better securing the enjoyment of them. The second and third subsections are designed as means to redress any violation of the rights preserved by the section. To subject any Act of the legislature to the appeal provided in the second subsection and to the remedies provided in the third subsection, it is obvious that such an Act must be passed in violation of the condition subject to which any jurisdiction is conferred upon the provincial legislature to make laws in relation to education, and must therefore be *ultra vires* of the provincial legislature ; for the language of the section expressly excludes from the provincial legislature all jurisdiction to pass such an Act. The jurisdiction, whatever its extent may be, which the provincial legislature has over education being declared to be exclusive, there can be no appeal to any other authority against an Act passed by the legislature under such jurisdiction, and any Act of the legislature passed in violation of any of the provisions in section 22, subject to which the jurisdiction of the legislature is restricted is not within their jurisdiction and is therefore *ultra vires*. The appeal, therefore, which is given by the second subsection must be only concurrent with the right of all persons injuriously affected by such an Act to raise in the ordinary courts of justice the question of its constitutionality.”

Here your Lordships are cited again.

“ If any doubt could be entertained upon this point, it is concluded in my opinion by their Lordships of the Privy Council in *Barrett vs. Winnipeg*, and *Logan vs. Winnipeg* (1892 A. C. 445) in the following language:—

‘ At the commencement of the argument a doubt was suggested as to competency of the present appeal in consequence of the so-called appeal to the Governor in Council provided by the Act, but their Lordships are satisfied that the provisions of subsections 2 and 3 do not operate to withdraw such a question as that involved in the present case from the jurisdiction of the ordinary tribunals of the country.’

I am quite certain there was no intention of making any deliverance whatever upon the question we now have, and that no such deliverance was at any rate made by the passage I have now cited. I cited it in effect for the purpose of showing that the court indicated rather a leaning the other way, but not more—

“ If an Act of the provincial legislature which is impeached upon the suggestion of its prejudicially affecting such rights and privileges as aforesaid, is not made by the 2nd section of the Manitoba Act, *ultra vires* of the provincial legislature, it cannot be open to appeal under subsection 2 of that section. The section does not profess to confer

upon the executive of the Dominion or the Dominion Parliamentary power of interference whatever with any Act in relation to education passed by the provincial legislature of Manitoba which is not open to the objection of prejudicially affecting some right or privilege with respect to denominational schools which some class of persons had by law or practice in the province at the union."

But it does not profess to alter it at all. That was the phrase in the first. The phrase is omitted in the second, and his Lordship says it does not profess to do the thing which I submit it does profess to do.

"All Acts of the provincial legislature not open to such objection are declared by the section to be within the exclusive jurisdiction of the provincial legislature, and as the Acts of 1890 are declared by their Lordships not to be open to such objection and to have therefore been within the jurisdiction of the provincial legislature to pass, those Acts cannot, nor can either of them, be open to any appeal under the 2nd subsection of this section.

"It has been suggested, however, that the rights and privileges whether conferred or recognized by the Acts of the legislature of Manitoba in force prior to and at the time of the passing of the Acts of 1890, and which were thereby repealed, were within the protection of the 22nd section, and that this was a matter not under consideration in *Barrett vs. Winnipeg*, and *Logan vs. Winnipeg*; and that therefore the right of appeal under subsection 2 of the 22nd section against such repeal does not exist, notwithstanding the decision of the Privy Council in *Barrett vs. Winnipeg*, and *Logan vs. Winnipeg*. This contention appears to have been first raised expressly in the petition presented in October, 1892, although it is impliedly comprehended in the paragraphs of the petition of April, 1890, which is repeated verbatim in that of October, 1892, wherein the Act of the provincial legislature of 1871 is relied upon as having had the effect to continue to the Roman Catholics that separate condition with reference to education which they had enjoyed previous to the creation of the province, and in so far as Roman Catholics were concerned merely to organize the efforts which the Roman Catholics had previously voluntarily made for the education of their own children and for the continuance of schools under the sole control and management of Roman Catholics and of the education of their children according to the methods by which alone they believe children should be instructed.

"But this statute of 1871 and all the statutes passed by the legislature of Manitoba in relation to education prior to 1890 were specially brought under the notice of their Lordships of the Privy Council, and were fully considered by them in their judgment as already pointed out, and if the repeal by the Act of 1890 of the Acts of the provincial legislature then in force in relation to education, constituted a violation of the condition contained in section 22, subject to which alone the jurisdiction of the provincial legislature to make laws in relation to education was restricted, it is inconceivable to my mind that their Lordships having all these statutes before them could have pronounced the Acts of 1890 to be within the jurisdiction of the provincial legislature to pass."

The Lord CHANCELLOR.—That is quite right, so they did. They did not consider that a violation of the conditions. The condition referred to is in subsection 1.

Mr. BLAKE.—Certainly.

The Lord CHANCELLOR.—If that subsection is only a remedy for subsection 1 *cadet questio* it is settled by the previous decision.

Mr. BLAKE.—I quite agree.

Lord WATSON.—We did not decide, and I do not think we necessarily laid down or found by our judgment that the Act was *intra vires* and effectual but simply that it did not sin against subsection 1.

Mr. BLAKE.—Your Lordships thought that it was not *ultra vires*, and you expressly stated that you doubted whether it was permissible in considering the question before you to look at the course of intermediate legislation. That is expressly stated, and yet he says that, although your Lordships adjudge that it is not permissible to look at the course of intermediate legislation, you were looking at it and deciding on it.

Lord WATSON.—There is a want of discrimination occasionally between what we do decide and what would be the logical result of our decision if you were to take in

connection with it one or two propositions established by the judges themselves and not by us.

Lord SHAND.—The learned judge could scarcely have intended to mean those words to refer to the Act of 1890.

Mr. BLAKE.—It is somewhat difficult to suppose that he could have read the decision, and have written those words which he has written.

Lord WATSON.—I do not think the board have the least right to complain of the judgment. It may be erroneous but they speak of the logical result of our judgment, and it would be the logical result, I think, in most cases if we assumed additional law and facts. We are not responsible for that. The judgment is what we have got to review and consider.

Mr. BLAKE.—Yes, my Lord. That is his Lordship's judgment, and then we come to Mr. Justice King. He says:—

“It may be convenient first to regard the constitutional provisions respecting education as they affect the original provinces——”

Then he states them. I think that a large part of it your Lordships have already had a good deal too much of.

Lord WATSON.—Did the learned judge suggest any new view or concur in the other views?

The Lord CHANCELLOR.—You had better read any parts of his judgment you would like to read.

Mr. BLAKE.—Mr. Justice King's was a judgment which favoured my view, and I should like your Lordships to hear it. It will be a variety, at any rate.

The Lord CHANCELLOR.—Yes, otherwise you would have accepted the suggestion.

Mr. BLAKE.—I hope not. My effort before your Lordships is to give you all the assistance that I ought to give you.

Lord WATSON.—Then Mr. Justice Fournier and Mr. Justice King are those in your favour?

Mr. BLAKE.—Those are the justices in favour of my argument. The learned judge points out that the 3rd subsection of section 93 and 2nd subsection of section 22 deal with a like subject, the right of a religious minority, and so on. Then I will go to page 196, line 33, which is where I think the substantial part commences.

“One difference is, that whereas by the clause in the British North America Act the appeal lies from an ‘Act or decision of any provincial authority’ affecting any right or privilege of the Protestant or Roman Catholic minority in relation to education, in the Manitoba Act the appeal lies from ‘any Act or decision of the legislature of the province’ as well as from that of any provincial authority. This was either an extension of the right of appeal or the getting rid of an ambiguity, according as the words ‘any provincial authority’ as used in the British North America Act did not or did extend to cover ‘Acts of the provincial legislature.’

“The addition to the first subsection of the Manitoba Act of the words ‘or practice’ and the addition in subsection 2 of the words ‘of the legislature of the province,’ would (so far as the context of these words is concerned) seem to show an intention on the part of Parliament to extend the constitutional protection accorded to minorities by the British North America Act, or at all events to make no abatement thereon.

“Then there is another difference between the language of the third subsection of the British North America Act and that of the second subsection of the Manitoba Act. The former begins as follows:—‘Where in any province a system of separate and dissentient schools exists by law at the union or is thereafter established by the legislature of the province, an appeal shall lie,’ etc., while in the Manitoba Act the introductory part is omitted and the clauses begins with the words ‘an appeal shall lie,’ etc., the two clauses being thereafter identical, with the exception that in the Manitoba Act (as already mentioned) the appeal in terms extends to complaints against the effect of Acts of the legislature as well as of Acts or decisions of any provincial authority.

“After this reference to points of distinction, I cite subsection 2 of the Manitoba Act again in full for sake of clearness.

" 'An appeal shall lie to the Governor General in Council from any Act or decision of the legislature of the province or of any provincial authority affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to education.'

"On the one side it is contended that in order to give the appeal, the rights or privileges of the religious minority need to have been acquired and to have existed prior to and at the time of the passage of the Act. On the other side it is contended that it is sufficient if the rights and privileges exist at the time of their alleged violation irrespective of the time when they were acquired."

Then there is a considerable portion of Sir Horace Davey's argument.

LORD SHAND.—You do not quite adopt that argument now, I think.

MR. BLAKE.—No, my Lord.

THE LORD CHANCELLOR.—Sir Horace Davey was on the other side?

LORD SHAND.—Was he?

MR. BLAKE.—Yes, he was on the other side.

THE LORD CHANCELLOR.—You have to deal with cases which are *intra vires*. You say they are clearly *intra vires*?

MR. BLAKE.—Yes, my Lord. Then I go to page 198 :—

"In the judgment their Lordships say that \* \* \* there would be a marked and very considerable difference between the corresponding clauses, if in the one case rights and privileges of the religious minority were recognized as subjects of protection when ever acquired, while in the other case they were not recognized as subjects of protection, unless they existed at the time of the passing of the Constitutional Act. Not wanting to put undue stress upon this, let us look at the clauses for ourselves. In subsection 1, Manitoba Act, there is an express limitation as to time, the rights and privileges in denominational schools that are saved are such as existed, by law or practice, at the union. But in subsection 2 nothing is said about time at all, and the natural conclusion upon a reading of the two clauses together is that with regard to the rights and privileges referred to in the latter clause the time of their origin is immaterial. Such also is the ordinary and natural meaning of subsection 2 regarded by itself. Read by itself, it extends to cover rights and privileges existent at the time of the act or thing complained of. The existence of the right and not the time of its creation is the operative and material fact."

THE LORD CHANCELLOR.—If all that was intended by subsection 2 is what has been suggested by the learned judges whose judgments you have read, one would rather have expected to find language simply "affecting any such right or privilege as aforesaid."

MR. BLAKE.—That is the whole.

THE LORD CHANCELLOR.—That is, according to them, what it means.

MR. BLAKE.—Yes, my Lord. That is the whole, and they were shortening up the clause, as your Lordship sees. The draughtsman was shortening from the British North America Act. Why does he proceed to deal with it in that way?

"And this agrees with the corresponding provisions of the British North America Act where subsection 1 refers to rights, &c., acquired before or at union, while subsection 3 in terms covers rights, &c., acquired at any time. In any other view there was clearly no necessity to add the words 'or any act of the legislature' in the remedial provision of the Manitoba Act, for such act would be wholly null and void under subsection 1,"

Which is of course quite true.

"There is, however, an undeniable objection to treating as an appealable thing the repeal by a legislature of an Act passed by itself. Ordinarily all rights and privileges given by Act of parliament are to be enjoyed *sub modo*, and are subject to the implied right of the same legislature to repeal or alter if it chooses to do so. But the fundamental law may make it otherwise."

Then he cites the legislation and the constitution of the United States which has been already referred to.

"It is certainly anomalous, under our system and theory of parliamentary power, that a legislature may not repeal or alter in any way an Act passed by itself.



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"Still, weighty as this consideration is, I can give no other reasonable interpretation to the Act in question than that, under the constitution of Manitoba, as under the constitution of the Dominion, the exercise by the provincial legislature of its undoubted powers in a way so as to give rights and privileges by law to the minority in respect of education lets in the Dominion Parliament to concurrent legislative authority for the purpose of preserving and continuing such rights and privileges if it sees fit to do so.

"By the British North America Act it was not clear whether the words 'Act or decision of any provincial authority' covered the case of an act of the provincial legislature, or was confined to administrative Acts, but in the Manitoba Act, the words explicitly extend to an Act of that legislature.

"Any ambiguity in subsection 2 of the Manitoba Act is I conceive to be resolved in the light of the corresponding provisions of the British North America Act. As the provisions of the British North America Act are to be applicable unless varied I think it reasonable that ambiguous provisions in the special Act should be construed in conformity with the general Act.

"Passing however, from it as a matter of construction it does not seem reasonable that parliament in forming in 1870 a constitution for Manitoba intended to disregard entirely constitutional limitations such as were three years before established, as binding upon the original members of the confederation. On the contrary by the addition of the words 'or by practice' in first subsection, and of the words 'or any Act of the legislature' in the second subsection, and by the provision of section 23 providing for the use of the French and English languages in the courts and legislature there is manifested a greater tenderness for racial and denominational differences. Further, unless subsection 2 has the meaning suggested, the entire series of limitations imposed by subsections 1, 2 and 3 are entirely inoperative, for the Judicial Committee has in effect declared that no right or privilege in respect of denominational schools existed prior to the union, either by law or practice, and therefore there was nothing on which subsection 1 could practically operate and as there was clearly no system of separate or dissentient schools established in Manitoba by law prior to the union, the provisions of subsections 2 and 3 are inoperative if the rights and privileges in relation to education are to be limited to rights and privileges before the union. There is no doubt that this construction limits the powers of the legislature and restrains the exercise of its discretion, but the same thing may be said of the effect of an appeal against 'any Act or decision of any provincial authority' in Nova Scotia or New Brunswick, in case either of such provinces were to adopt a system of separate schools. The legislature might not choose to pass the remedial legislation necessary to execute the decision of the Governor General in Council and the Dominion Parliament could then exercise its concurrent power of legislation, in effect overriding the legislative determination of the provincial legislature. The provision may be weak, one-sided, as giving finality to a chance legislative vote in favour of separate schools inconsistent with a proper autonomy, and without elements of permanence, but if it is in the constitutional system it must receive recognition in a court of law.

"Assuming then that clause 2 covers rights and privileges whensoever acquired, the next question is as to the meaning of the words 'rights and privileges of the Protestant or Roman Catholic minority in relation to education.' Here again, I think, we are to go to clause 3 of section 93, British North America Act. I think that the reference is to minority rights under a system of separate schools, and that it is essential that the complaining minority should have had rights or privileges under a system of separate or dissentient schools existing by law at the union, or thereafter established by the legislature of the province. The generality of the words under clause 2 of the Manitoba Act is to be explained by clause 3, section 93 of the British North America Act, and to have the same meaning as the corresponding words in it. The two remaining questions then are: Was a system of separate or dissentient schools established in Manitoba prior to the passage of the Manitoba Education Act of 1890? And have any rights or privileges of the Roman Catholic minority in relation thereto been prejudicially affected? One of the learned judges of the Queen's Bench of Manitoba thus succinctly summarises the school legislation of Manitoba in force at the time of the passing of the Act of 1890."

The Lord CHANCELLOR.—That we need not have. Then you go to line 41?

Mr. BLAKE.—Yes, my Lord.

"Now, the system of education established by the Act of 1881 was not in terms and *eo nomine* a system of separate or dissentient schools, and if the constitutional provision required that they should be such in order to come within the Act, then the minority did not have the requisite rights and privileges in respect of education. As to this, I have had doubts arising from the opinion that where rights and privileges have no other foundation than the legislative authority—whose subsequent Acts in affecting them is impeached, the restraint upon the general grant of legislative authority should be applied only where the case is brought closely within the limitation. At the same time, we are to give a fair and reasonable construction to a remedial provision of the constitution, and are to regard the substance of the thing."

LORD SHAND.—That seems to be the main point. When you are asked what the privilege is, I think it is that which is mentioned there.

MR. BLAKE.—Yes, my Lord; this set of privileges. I do not say "that" but "these," they are several of them.

"Now, the Roman Catholics were in the minority in 1881, and are still, and a system of schools was established by law, under which they had the right to their own schools—Catholic in name and fact—under the control of trustees selected by themselves, taught by teachers of their own faith, and supported in part by an assessment ordered by themselves upon the persons and property of Roman Catholics, and imposed, levied and collected as a portion of the public rates; the persons and property liable to such rate being at the same time exempt from contribution to the schools of the majority—i.e., Protestant schools. This, although not such in name, seems to me to have been essentially a system of separate or dissentient schools, of the same general type as the separate school system of Ontario, and giving therefore to the minority rights and privileges in relation to education in the sense of subsection 2, section 22, Manitoba Act, and subsection 3, section 93, British North America Act.

"It is true that the schools of the majority were Protestant schools, and that the majority had the same right as the minority; but I do not think that this renders the minority schools any the less essentially separate schools of the Roman Catholics. In Quebec the majority schools are distinctly denominational.

"Then was the right and privilege of the Roman Catholic minority in this system of separate schools prejudicially affected by the Act of 1890? And if so to what extent?"

THE LORD CHANCELLOR.—Then they quote the judgment of the Judicial Committee?

MR. BLAKE.—Yes.

LORD SHAND.—It is worthy of noting, before you pass on, that the Archbishop, in the description of the privileges, does not describe anything like the privileges which are founded on here.

MR. BLAKE.—How could he? He had none of them. He was referring to the condition at the time of the union. That shows how much more we have got since.

LORD SHAND.—That is what distinguishes the two cases.

THE LORD CHANCELLOR.—Then I think the next passage is on page 202, line 10.

MR. BLAKE.—Yes, my Lord.

"The question then is whether the language of their Lordships is applicable to this state of things, and whether or not it can be said (changing their lordships' language to suit the facts) that the establishment of the national system of education upon an unsectarian basis is so inconsistent with the right to set up and maintain, by the aid of public taxation upon the denominational minority, a system of denominational schools, that the two cannot co-exist, or that the existence of the system of denominational minority schools (supposing it still in existence) necessarily implies or involves immunity from taxation for the purpose of the other. It rather seems to me that no reasonable system of legislation could consistently seek to embrace these two things, viz., the support of a system of denominational schools for the minority, maintainable through compulsory rating of the persons and property of the minority, and, second, the support of a general system of unsectarian schools, through the compulsory rating of all persons and property, both of the majority and the minority. The effect of such a scheme would be to impose a double rate upon a part of the community for educational purposes.

"The logical result of this view would be that by the establishment of a general non-sectarian system (as well as by the abrogation of the separate school system) the rights and

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privileges as previously given by law to the denominational minority in respect of education were necessarily affected. Of course the minority would obtain equality by giving up their schools, but the present enquiry at this point is whether a right acquired by law to maintain a system of separate schools had been affected by an Act which takes away the legal organization and status of such schools and their means of maintenance, by the repeal of the law giving these things, and which subjects the persons and property of the denominational minority to an educational rate for general non-sectarian schools, instead of leaving them subjected to an educational rate for the support of the separate and denominational schools. It is true that by the Act of 1881 and amending Acts, the exemption was an exemption from contribution to the Protestant schools, and the schools under the Act of 1890 are not Protestant schools, but the substantial thing involved in the exemption under the Acts of 1881 and amending Acts was, that the rate-payers to the support of the Catholic schools should not have to pay rates for the support of the schools established by the rest of the community, but should have their educational rates appropriated solely to the support of their own schools. This was an educational right or privilege accorded to them in relation to education under a system of separate schools established by law, which the legislature, if possessing absolute or exclusive authority to legislate on the subject of education without limitation or restraint, might very well withdraw, abrogate or materially alter, but which under the constitutional limitations of the Manitoba Act can be done only subject to the rights of the minority to seek the intervention of the Dominion Parliament, through the exercise of the concurrent legislative authority that thereupon becomes vested in such Parliament upon resort being first had to the tribunal of the Governor General in Council.

"Although there are points of difference between this case and what would have been the case if the prior legislation of Manitoba had established a system of separate schools following precisely the Ontario system, I cannot regard the differences as other than nominal, and treat this case as though the Act of 1881 and amending Acts distinctly established a system of separate schools, giving for the general public a system of undenominational public schools and to the Catholic minority the right to a system of separate schools. In such case I do not see how the passing of such an Act as the Act of 1890 could fail to be said (by abolishing the separate schools) to affect the rights and privileges of the minority in respect of education. With some change of phraseology and some change of method, I think that what has been done in the case before us is essentially the same.

"If the clauses of the Manitoba Act are to have any meaning at all, they must apply to save rights and privileges which have no other foundation, originally than a statute of the Manitoba legislature.

"The constitutional provision protects the separate educational status given by an Act of the legislature to the denominational minority. The view that the effect of this is to restrain the proper exercise by the legislature of its power to alter its own legislation is met by the opposite view that there is no improper restraint if it is a constitutional provision, and that in establishing a system of separate schools the legislature may well have borne in mind the possibly irrepealable character of its legislation in thereby creating rights and privileges in relation to education."

Lord SHAND.—I understand that this learned judge takes the provision as being quite *intra vires* of this later Act.

Mr. BLAKE.—Certainly, my Lord. That concludes the judgments.

[Adjourned till to-morrow at 10.30.]

THIRD DAY.—Thursday, December 13, 1894.

The LORD CHANCELLOR.—Before proceeding with this appeal, which arises on a reference from the government of Canada, I cannot refrain from alluding to the painful event which has deprived that country of its chief minister. He had received at the hands of Her Majesty a signal mark of appreciation of the high services which he had rendered. He had just been sworn a member of this Council. In a few minutes the hand of death was upon him, and the country he had served so well has been deprived of his most valuable aid. This is not the time or place for eulogy or for an estimate of the services he rendered, but in the great trouble which has fallen upon the Dominion of Canada, I desire on behalf of myself and my colleagues to express our deep sympathy with the government and people of that country, and to associate ourselves with their sorrow.

MR. BLAKE.—Perhaps your Lordships will allow me, as a resident of that country to which your Lordship has just alluded, to say how grateful I am that your Lordships have thought fit to say a word upon the very tragic event which has occurred, and to assure you that I believe, without distinction of party, the inhabitants of the Dominion of Canada will receive with gratitude the expression of sympathy with a grief which they entertain in common.

MR. EWART.—My Lords, I desire to add a few words upon the two principal points in the case. First upon the question whether subsection 2 was intended and devised as a remedy merely for cases coming within subsection 1. In considering that question I think it will be perfectly fair to regard the section and the first subsection as declaring and limiting the jurisdiction of the legislative assembly. They are both necessary for that purpose and together they complete and finish the subject. The section gives jurisdiction over the whole subject of education which may be represented (say) by the figure 9. The first subsection is a subtraction of certain powers which may be represented by the figure 1, leaving the net result of 8 or 8.9ths of education. It is with this result—8.9ths of the education—that we pass on to subsection 2. The question, then, is whether it is from the 8.9ths the net result, or from the 1-9th, the part subtracted, that the appeal lies. I venture to think that if any one who had never seen these statutes were asked from which of these he thought it more probable that an appeal would be given, he could not hesitate to reply that an appeal would no doubt be in respect of those things with which the legislature was going to deal, and he would be much surprised if he were told that he was quite wrong, that extensive powers of appeal were to be given from the legislature in respect of the subjects over which the legislature had no control and with which presumably it would never in all time to come attempt to deal. If the statute had been giving jurisdiction to a court, instead of to a political body, I do not think there could be any doubt as to the construction. If a statute gave to a court jurisdiction, say, in matters of debt, and provided that it should not have jurisdiction if over £1,000 were involved, and then an appeal was given from any decision affecting anybody's rights, I think there could be no reason to doubt that an appeal was from those matters which were within the jurisdiction of the court and not from those which were withdrawn from that jurisdiction. The only appearance of difficulty, as it seems to me, arises from the superficial resemblance between the language used in limiting the jurisdiction and the language used in describing the circumstances under which an appeal will lie. Roughly, it may be said, if rights are affected, then there is *ultra vires*, and roughly again, if rights are affected, then there is an appeal. But the language is not identical. If it were identical we should be then left to imagine how we could possibly succeed upon an appeal in convincing his Excellency that an *ultra vires* statute had affected us, and how possibly we were in need of legislation to remedy something which really had not happened. But the language, as is pointed out by my learned leader, is very far from identical. On the contrary, as it seems to me, as he has pointed out, it is in almost every point of view in contrast; for instance, if we are to ask who is to complain or who may complain under the different subsections, the answer is that anybody can complain under the first subsection. The statute is *ultra vires*; any one can plead that the Act is *ultra vires*; any one who is brought into an action in which

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that clause comes in question can contend that it is *ultra vires*; but in subsection 2 it is only a member of a particular religious body, and then only in case that religious body be in a minority that any one can appeal. I say the persons are entirely different. Then, if we are to ask what rights are protected we find again a contrast. Under subsection 1 they are rights "at the union," under subsection 2, "any rights," leaving out the words, "at the union;" and then if one regards the circumstances under which complaint can be made under subsection 1, it is if "rights with respect to denominational schools" have been "prejudicially affected," and under subsection 2 it is if "rights relating to education are affected." So with reference to every element there is more of contrast than there is of identity.

LORD WATSON.—Subsection 2 of section 22, and subsection 3 of section 93, admittedly are different in expression. Whether they are or are not substantially identical, it seems to me not going too far to say we have been shown is a debatable question. If the language of subsection 2 is by itself intelligible, and free from ambiguity, we have no occasion to solve that question.

MR. EWART.—No. These two clauses are not associated. The section, and the first subsection together make up the jurisdiction, and then we pass on to have an Appeal. I am confining my remarks to the Manitoba Act at present, and I am showing the difference between the first and second subsection.

LORD WATSON.—Whether they differ in substance or not, the question still remains a question upon subsection 2 of the Act of 1870. If they differ in substance the one throws no light on the other. If they are identical in substance, the one may throw light to lead you to the conclusion that the two legislatures meant the same thing. But that does not help you to construe the statute.

MR. EWART.—No; I admit all that. What I was trying to do was to point out the point of contrast between the sections of the Manitoba Act, showing that they had nothing in common. I desire to point out that if that was devised as a remedy for an *ultra vires* statute, that is the only example we have of such an extraordinary remedy; that yet there are plenty of cases of *ultra vires* statutes, and under the scope of the British North America Act there are clauses which would have invited the provision of an appeal if that were thought to be the best or proper way of getting rid of an *ultra vires* statute. For instance, under section 92 of the British North America Act, subsection 10, I find a clause worded in somewhat the same fashion; at all events constructed on the same principles, namely, the subject of legislation given to the provincial legislature "Local works and undertakings" and then a subtraction from that wide gift, "Other than such as are of the following classes;" and yet we never have any appeal, although it is plain that that might be violated in the same way as this clause might be violated. On the other hand we have examples of appeal somewhat at all events of the same nature.

LORD WATSON.—There are two cases in which resort may be had to the Parliament of Canada. The first is, where provincial laws from time to time are requisite for the due execution of the section. The second is, where any decision of the Governor General on appeal is not given effect to by an Act. There are two different cases, and only two cases. They are put alternatively in subsection 3 of the Manitoba Act. Under the second it is perfectly clear, and there can be no doubt as to what is meant. The Governor General says that such and such an enactment must be modified or altered. If effect is not given to that ordinance or ruling of the Governor General by the provincial legislature, then he may appeal to the Canadian legislature—the Dominion legislature to give effect to it, to do what the provincial government ought in deference to the Governor's ruling, to have done. The language used seems to give by the third subsection to the Canadian legislature more than power simply to repeal a particular clause of an Act, or to declare it null. Perhaps we need not distress ourselves with that. I do not know what to say that particular provision points to. They are empowered to pass laws which appear to the Governor General to be requisite for the due execution of the provisions of the section. One of the things which is to be done in due execution of the section is to avoid legislating to certain effects prohibited by subsection 1.

Mr. EWART.—In that case there would be no appeal at all. They would not require to pass remedial legislation.

The Lord CHANCELLOR.—It seems to suggest that there might be on the part of the Canadian legislation some prohibitory Act.

Mr. EWART.—To take effect in the future—that they must not do so and so. It seems to me that the appeal lies only in case our rights have been affected, and we have to show, as a ground for our appeal, that some rights have been affected.

Lord WATSON.—It may be; the language is tolerably wide; remedial measures obviously for the purpose of preventing any departure from the terms of this particular clause.

Mr. EWART.—The first clause.

Lord WATSON.—That includes the whole section. It is the two preceding clauses.

Mr. EWART.—My point is that the first relates to *ultra vires* and the second to *intra vires*, and that the third is wide enough to embrace both. Yet in its application it is necessarily confined to the second, because we could only say it was affected by an *intra vires* statute.

I desire to point out that this is not the first instance of an appeal from an *intra vires* statute. My learned friend may suggest that it is somewhat of a novelty, but I can give at least two examples from our constitutional history of something at all events of the same nature. The very early Constitutional Act of 1791, 31 George III, cap. 31, sec. 12, had a provision for the purpose of safeguarding the rights of persons with respect of controversial matters. It is a long section, but the gist of it is to this effect, that whenever any Bill shall be passed containing any provisions which shall in any manner relate to or affect the enjoyment or exercise of any form or mode of religious worship, or shall impose or create any penalties, &c., in respect of the same, or shall in any manner relate to or affect the payment, recovery or enjoyment of any of the accustomed dues or rights—the royal assent was to be withheld for thirty days after the bill was laid before the Parliament.

Lord WATSON.—The provincial parliament does not hold quite the same relation to the province as the Dominion does.

Mr. EWART.—This was an Act of the legislature of Quebec.

The Lord CHANCELLOR.—You are speaking of a case in appeal in a matter *intra vires*?

Mr. EWART.—Yes.

Lord SHAND.—What followed besides that they were to allow thirty days to elapse?

Mr. EWART.—The assent shall not be given, in case either house address Her Majesty to withhold it.

Lord SHAND.—Read the rest of the clause. The substance of it was that during that time there might be an address presented.

Mr. EWART.—Yes, within the thirty days. In fact, there would be an appeal to both houses, or to either house, from *intra vires* legislation in Canada under this statute. Your Lordships will find the same provision, or one almost identical with it, carried into the Union Act of 1840 (3 and 4 Vic., c. 35, sec. 42). That provision was in force right down to confederation.

Lord WATSON.—In both these statutes the imperial legislature seems to have laid down the rule for provincial or Canadian legislation.

Mr. EWART.—Yes.

Lord WATSON.—That is quite within their competence. The Dominion Parliament have, as far as I can see, no power to interfere with provincial legislation upon the subject of education, except in so far as it is given them by these two clauses.

Mr. EWART.—Quite so. It is only an example of the right of appeal given.

Lord WATSON. A right of appeal to the governor, and in a sense an appeal to the Parliament of Canada.

Mr. EWART.—The next highest legislative power. Another example may be given from the British North America Act.

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LORD WATSON.—The power given of appeal to the government, and upon request by the governor to the legislature of Canada, seems to be wholly discretionary in both.

MR. EWART.—No doubt.

LORD WATSON.—Both in the governor and in the legislature.

MR. EWART.—Yes. Another example I desire to give is to be found in section 95 of the British North America Act where something in the nature of an appeal was given in connection with the subjects of "agriculture and emigration." Legislative control is given to the legislatures in connection with those subjects, but it is provided that such legislation is only to have effect in and for the province, as long and as far only as is not repugnant to any Act of Parliament of Canada. So that if any minority found itself improperly dealt with or harshly dealt with in any province there would be an appeal over to the Parliament of Canada.

LORD SHAND.—I suppose there is no question upon this; from subsection 3 of the Act of 1867, there is no doubt that in some cases an appeal would lie to the Governor General from any act or decision of the provincial authority?

MR. EWART.—Yes.

LORD SHAND.—The only question is whether "provincial authority" does or does not include the legislature?

MR. EWART.—Yes.

LORD WATSON.—If it were clear that in subsection 4 of section 93 of the Act of 1867, the legislation of the Parliament of Canada was not to extend to the subject matter of subsection 1, it would be almost convincing evidence that the provincial authority was meant to include the provincial legislature, because in that case, on the assumption I put, what would be the use of invoking the power of the Dominion Parliament except for the purpose of over-riding provincial legislation?

MR. EWART.—That is all.

LORD WATSON.—It is not clear that subsection 4 does not refer to legislation connected with subsection 1. The argument on the other side, I understand, is that the introduction of the Dominion Parliament (and that is the view taken by some members of the court) is to be explained by reference to subsection 1.

MR. EWART.—I was going to summarize what I have to say. The reasons I offer are in the first place because if 2 was intended as a remedy for 1, the language of 2 would have been very different. It would have been "affecting any such right." And if it had been thought necessary to describe the rights again it would have been done in the same language as before. (2.) Because if 2 be a remedy, it would be given to the same persons mentioned in 1. (3.) Because if 2 is a remedy, it would be given in respect of the same rights as 1. (4.) Because if 2 is a remedy, it would be given under the same circumstances. (5.) Because no such remedy is necessary in respect of void Acts. (6.) Because such a remedy is wholly inappropriate—an appeal on a dry legal question of *ultra vires* to a political body without any reason for its withdrawal from the courts. (7.) Because no such remedy is given in respect of any other *ultra vires* legislation. (8.) Because the relief to be given is not that which would follow upon an appeal from an *ultra vires* act—remedial laws are to be made. If the Governor General thought an act *ultra vires* against which we were appealing, he would not request local legislation to pass an act, and would not ask the Dominion Parliament to legislate upon default, (9.)—which I think was suggested by the Lord Chancellor—because if "provincial authority" does not include "legislature," then the appeal given by the British North America Act is clearly not a remedy for cases within 1; for in that case there would be no appeal from an Act at all.

LORD WATSON.—The governor might be of opinion to-day or this year that it was not desirable in the interests of the community that certain previous privileges given by parliament should be repealed; but ten years hence he might be of a different opinion. If there were legislation of a prohibitive kind included in this remedial legislation, there would be an Act of Parliament in the way of his exercising his discretion on the subject.

MR. EWART.—He would have to exercise his discretion to begin with to give parliament jurisdiction.

Lord WATSON.—Is there any further jurisdiction given to the Dominion Parliament than to pass measures which would give effect to the opinion or determination of the governor upon points that are completely brought before him by appeal.

Mr. EWART.—I should think not.

I now wish, my Lords, almost as shortly to summarize the reasons why I contend that subsection 2 applies to post-union rights. In the first place, I point to the generality of the statute. It says "An appeal shall lie to the Governor General from any Act," and there is nothing in the section itself to limit the generality of that phrase. It seems to be the requisite of an appeal that some rights should have existed, and it is not material as to the date of their birth. Then I point out also in that connection the absence of the words "at the union." Thirdly, I would suggest that the scope of the Act is to protect minorities, and that not merely in respect of rights that are enjoyed at the time of the union; but it is an Act which is intended to last for a great length of time. It might go on lasting for ever, at all events for a great period of time. In the course of time rights would no doubt be very much changed, the whole system might undergo a change in various respects, and it can hardly be, I should submit, the intention that only rights conserved at the union were to be protected, although those rights would have been supplanted by others which had been accepted by all the denominations of the community, and which were now held in substitution. It would be a bar to the acceptance of any charges of that kind, no matter how beneficial if all safeguard was given up. It seems to me therefore that the first subsection relates to pre-union rights and the second to post-union rights. Then the fourth point I make is that the corresponding section of the British North America Act clearly applies to post-union rights so far at all events as Nova Scotia and New Brunswick are concerned. Then I would urge also that this being a constitutional statute, and in some measure a treaty, a very large and a liberal interpretation ought to be given to the language, rather than a narrow and subtle construction, which would have the effect of producing a nullity.

Before closing I would like to say a word or two as to what we are seeking. As it has been already remarked, we are not asking for any declaration as to the extent of the relief to be given by the Governor General. We merely ask that it should be held that he has jurisdiction to hear our prayer, and to grant us some relief if he thinks proper to do so. It may be that the Dominion authorities may not choose to re-establish us in all the rights and privileges which we enjoyed prior to this Act of 1890, although that was a system that had been approved of by the more important religious bodies, and acquiesced in by everybody, and it remained as a good working Act for a period of nineteen years, and although I may say also that that is the system, or almost the system, which has existed in the province of Quebec for more than a quarter of a century, it may be that the Dominion authorities may prefer the Ontario system, under which there is a closer governmental control—a system under which government control is very complete, under which books are chosen by the government inspectors appointed by government, and all school regulations are made by government. Or it may be that some other system may be devised which will enable the Roman Catholics to teach in schools to which no Protestant child now goes, the religion of its parents under limited circumstances, without thereby being penalised by ostracism from the public school provisions. We cannot tell, nor have I come here instructed to state what the measure of relief will be which will be asked if it be held that the Governor General has jurisdiction to deal with the matter, but this much I think I may properly say that we have no desire to withdraw from the operation of state statutory control. That position we never did possess under the Manitoba statutes, and we do not seek—nor, indeed, can we ask—to be placed in any better position than the position which we occupied prior to the Act of 1890.

Mr. COZENS-HARDY.—My Lords, I appear with my learned friends, Mr. Haldane and Mr. Bray, for the Government of Manitoba, and although it will not be necessary for me, I hope, to trouble your Lordships at any very great length, having regard to the fact that all the judgments and almost all the documents have been read to your Lordships, I am sure your Lordships will pardon me in a case of so much interest and importance to the Dominion, if I think it my duty to put before you in some detail the various points which arise.



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My Lords, the point, and I submit the only point, which is before your Lordships now may be divided into two: in the first place, is there any appeal from a post-union *intra vires* Act of the legislature, and next, even if that be so, there is the further point whether this post-union legislation including in that term the Act of 1890 affects any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects? Both those points have to be answered in the affirmative if this appeal is to succeed. I propose to suggest to your Lordships that section 22 of the Manitoba Act is the only section which has to be considered. It may be right to refer to section 93 of the British North America Act, but section 22 I submit to your Lordships completely defines the power of the legislature of Manitoba, and no part of section 93 of the Act of 1867 is operative in the sense of having express or definite legislative effect.

Lord WATSON.—It was the intention of the legislature to substitute in the case of Manitoba section 22 of the Act of 1870 for section 93 of the Act of 1867.

Mr. COZENS-HARDY.—Your Lordship has put the proposition which I am endeavouring to submit. That is the view I take—section 22 says this at the beginning of it: “In and for the province the provincial legislature may exclusively make laws in relation to education subject and according to the following provisions.” Those are the provisions following in section 22, and it seems inconsistent with that to say that it is not only subject and according to the following provisions but also subject and according to such provisions of section 93 of the British North America as in any way are not identical.

Lord WATSON.—It might be suggested that in 1870 this province is brought in the same way within the provisions of the Act.

The Lord CHANCELLOR.—You must take it with this, that section 93, unless there is reason shewn to the contrary, would *prima facie* be applicable to Manitoba. You have to shew that section 93 has been varied by the Manitoba Act in order to make it inapplicable. It does not rest on them to make it applicable; it rests on you to make it inapplicable by shewing that it has been varied by the Manitoba Act.

Mr. COZENS-HARDY.—Is that quite so having regard to section 2? Section 2 says: “The provisions of the British North America Act, 1867, shall, except those parts which are in terms made or by reasonable intendment may be held to be specially applicable to or only to affect one or more, but not the whole, of the provinces now composing the Dominion.” Section 93 does not affect the whole of the provinces in the Dominion.

The Lord CHANCELLOR.—Yes, surely, section 2 says “now composing,” that is at the time that that Act was passed. At that time section 93 applied to the whole of the provinces.

Mr. COZENS-HARDY.—Subsection 3 of section 93 which is the only material point of difference, does not apply, because that is “where in any province a system of separate or dissentient schools exists by law at the union.”

The Lord CHANCELLOR.—“Or is thereafter established.” That subsection applied to all the provinces forming the Dominion.

Mr. COZENS-HARDY.—There are no separate or dissentient schools in Manitoba.

The Lord CHANCELLOR.—This has nothing to do with Manitoba: “now composing the union” did not include Manitoba. It was the then provinces. Subsection 3 applied to all the then provinces of the Dominion.

Mr. COZENS-HARDY.—No; I think my learned friend admitted that it did not. It did not apply to Nova Scotia and New Brunswick.

The Lord CHANCELLOR.—Subsection 3 clearly applies to all the provinces of the Dominion.

Lord WATSON.—The Imperial legislature in the Act of 1867 left niches to be filled by other provinces. As soon as those other provinces came in they were within the terms of section 93, but I quite admit, in this case, the terms upon which Manitoba came into the federation were settled by the Dominion Parliament, otherwise they could not have exempted Manitoba from the provisions of section 93.

Mr. COZENS-HARDY.—Let me now proceed with section 2. I stopped at those words “now composing the Dominion.” Then we come to this: “and except so far as the same may be varied by this Act.” Then when you come to section 22, I suggest to your Lordships that it is varied by this Act, because there is an express assertion that the exclusive power to make laws relating to education is subject and according to the following provisions.

Lord SHAND.—To what extent do you concede that you look at subsection 3 in the construction of subsection 2 of the Act of 1870?

Mr. COZENS-HARDY.—I say you must not look at it at all, except so far as it may be, and I suppose is, legitimate in a Constitutional Act of the province of Manitoba to look at the general legislation of the whole Canadian Dominion.

The Lord CHANCELLOR.—Beyond that you must surely look at it for this purpose. The only thing that makes it inapplicable is that it is varied by this Act of 1870. In order to see whether it is varied or not you must see what it says, and therefore you must see what the variation is, otherwise you cannot come to the conclusion that it is varied and inapplicable. It is something more than looking to a piece of general legislation.

Mr. COZENS-HARDY.—Your Lordships will bear in mind the point I was endeavouring to make was that on the face of section 22 it is exhaustive and complete, because it says they may make laws subject and according to the following provisions.

The Lord CHANCELLOR.—Is that conclusive? On the other hand, if 93 is applicable, it is conceivable that it might import a further condition. Supposing there were some condition entirely different from those with which we are dealing, those found in 93 and in 22, and that that separate and independent condition were found in 93, I am not at all sure that it would be clear that that would be inapplicable. You see, *prima facie*, it is incorporated. *Prima facie*, all the conditions of 93 apply to Manitoba. You have got to see whether they do or do not, by seeing whether they have been varied “except so far as the same,” that is, except so far as the provisions to be found here and the conditions to be found have been varied. It is quite conceivable that there might be certain conditions added in the case of Manitoba, and yet that some of the conditions of the British North America Act might still be applicable.

Lord WATSON.—What I think was the intention of the Dominion Parliament in enacting that statute of 1870 was this, they meant to re-enact section 93 with alterations which would make it suitable to the circumstances of Manitoba at the time.

Mr. COZENS-HARDY.—Yes, and to make it a complete code of legislation with respect to education for Manitoba.

Lord WATSON.—I think that is so. If they had left out a substantive provision that would have otherwise applied to Manitoba. I think that omission would probably show that they did not intend that particular provision to apply in the case of Manitoba.

Mr. COZENS-HARDY.—That of course is my submission.

Lord WATSON.—They have left out that which obviously does not apply.

Mr. COZENS-HARDY.—But, my Lord, even if that be not so, on the mere face of section 22 I submit it is.

Lord WATSON.—Your contention is, and I feel very much inclined to agree with it, and I do not think it was seriously disputed on the other side, and I do not think it very materially affects the question we have to decide—I think it was intended that that clause 22 should comprehend the whole code of legislation with respect to education in Manitoba.

Mr. COZENS-HARDY.—No doubt.

The Lord CHANCELLOR.—That there should be, in short, a variation of section 93. If it is not a variation of section 93, then section 93 would be applicable.

Lord WATSON.—They have repeated these provisions in 93 which they have intended to apply, and have left out those provisions in 93 which they intended not to apply, and have inserted provisions which, whether differing or not, in substance are certainly differently expressed.

Mr. COZENS-HARDY.—That is the first point which I desire to make, and that is the point on which I think three judges took the view I am addressing to your Lordships, and two took the other view.

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LORD SHAND.—Do you mean the two judges in minority would not have come to the same conclusion without subsection 3 of the British North America Act?

MR. COZENS-HARDY.—I do not know that I can quite say that; I am not putting my case so high as that.

LORD SHAND.—I think it could not be put so high as that.

LORD WATSON.—There are some strong statements to the effect that it ought to be assumed; that the intention was to assume it.

LORD SHAND.—I rather read the two judges, as putting it alternatively, that with the act of 1870 alone they would come to the same result, but with the light of the Act of 1867, it was made clearer.

MR. COZENS-HARDY.—I venture to think they were influenced undoubtedly by the conviction which they formed that subsection 3 of section 93 so far as it differed from section 22 assisted their view and enabled them to arrive at the decision which they did arrive at.

Now, my Lords, dealing with section 22, and with section 22 alone for the present, what is its object? I venture to submit to your Lordships that its object is to define and to limit the exclusive powers of legislation which were given to the provincial legislature of Manitoba in and for Manitoba. It shows an intention to preserve the rights and privileges with respect to denominational schools which existed at the union and those only. It enabled the legislature to pass a law affecting and prejudicially affecting any right or privilege with reference to denominational schools which was created only by post upon legislation and which was not in existence at the date of the union. And further that the only effect of subsection 2 is to give a special means of testing whether the legislature has or has not gone outside of the limits imposed upon it by subsection 1. Now, my learned friends have argued that cannot be. They say that cannot be because if the Act is *ultra vires* that is a point which may be raised, and properly raised, in proceedings in the ordinary courts of law.

LORD WATSON.—Then it really and truly comes round to this contention that in construing subsection 2 you must read the words "affecting any right or privilege of the Protestant or Roman Catholic minority" just in the same way as though they ran "affecting the afore-said right or privilege."

MR. COZENS-HARDY.—Yes.

THE LORD CHANCELLOR.—Aforesaid does not say anything about majority or minority—"affecting the rights aforesaid" you substitute for "affecting any right or privilege of the Protestant or Roman Catholic minority relating to education." Is not there rather an objection at the outset to such a construction from the altered language of subsection 2? The words at the end are very much wider than the words of subsection 1. Would it be according to ordinary rules of construction to limit them in that way?

MR. COZENS-HARDY.—I suggest to your Lordships there was a special reason for giving this means of testing.

THE LORD CHANCELLOR.—I am not on the "means of testing." Suppose you are right in saying you can shew reasons which would justify them, what I am calling your attention to is your argument that this second subsection relates only to matters referred to in the first. What I am pointing out is that where you have such a change of language as you have here for the words "any right or privilege which any class have by law or practice in the province at the union," and when you find instead of those the words "affecting any right or privilege of the Protestant or Roman Catholic minority in reference to education," the ordinary rules of construction suggest that the second *prima facie* means something different from the first.

LORD WATSON.—If the legislature had chosen so to limit the right of appeal expressly to the aforesaid right without saying anything more, I should not have been prepared to challenge the propriety or reasonableness of what they had done, but it does not in the least follow that I am to be guided by that circumstance.

MR. COZENS-HARDY.—In considering subsection 2 and subsection 3 also, it may be necessary, and probably is necessary, to consider what are the functions of the Governor General. Has he any judicial character?

The Lord CHANCELLOR.—I think the primary question is to determine what the second applies to, which is independent of the functions of the Governor General. The functions of the Governor General come in later.

Mr. COZENS-HARDY.—Section 2 begins by saying: "An appeal to the Governor General shall lie."

The Lord CHANCELLOR.—The question is, from what? You say only from an Act which infringes the rights which are protected by subsection 1. That is the first step you have to take.

Mr. COZENS-HARDY.—I do not deny that "Act" includes "statute" here, but "Act" does not mean "statute." "Act or decision of any provincial authority" means something done by the legislature or provincial authority.

The Lord CHANCELLOR.—The only way in which the legislature acts is by statute, is it not?

Mr. COZENS-HARDY.—Is that quite so? Certainly that would not be the case with a provincial authority. The same words apply to both.

Lord WATSON.—And provincial authority under this clause is distinguished.

Mr. COZENS-HARDY.—Yes, it is. I submit although the word "Act" would include a statute of the legislature, yet it is not in terms so described, but it is said to be subject to an appeal because it is something which is contrary to the main purpose, object and intent of the Act.

The Lord CHANCELLOR.—As applied to the legislature does not that mean statute?

Mr. COZENS-HARDY.—It would include it.

The Lord CHANCELLOR.—What else can the legislature do but enact?

Mr. COZENS-HARDY.—There may be resolutions passed. There may be various acts. They might have done some things not in the shape of an Act.

The Lord CHANCELLOR.—We are not talking of an assembly which may have some prerogatives at common law.

Lord WATSON.—I do not think any resolution of the assembly which was not in the form of an Act and not sanctioned by the crown would affect private rights.

Mr. BLAKE.—The legislature is composed of the lieutenant governor and the assembly. It is an Act of the legislature.

Mr. COZENS-HARDY.—That still leaves open a question which I desire to submit to your Lordships. My friends say this cannot apply to an *extra vires* statute.

The Lord CHANCELLOR.—I do not think they said it cannot apply.

Mr. COZENS-HARDY.—I think my friend's argument went to that length.

The Lord CHANCELLOR.—They said it cannot apply in this sense that the provision affecting them, if it were void under subsection 1, could not be described as an Act of the legislature, because an Act of the legislature must mean something which it effectually does and not something which it purports to do and does not.

Mr. COZENS-HARDY.—Is that right? It is not of course usual to provide any machinery for deciding the abstract question, whether a by-law of a corporation or an act of a subordinate legislative authority is or is not valid.

Lord WATSON.—It does not seem very probable *prima facie* that there should be a reference given to the governor to consider whether an act which this statute declares to be *ultra vires* shall be retained on the statute book or shall be modified. What is given to the governor is a discretion to do what he thinks fit on appeal. How is he to exercise that discretion in the case of an Act which has been declared by the Imperial legislature itself or the Dominion legislature, acting under the authority of the Imperial legislature to be in itself *ultra vires*?

Mr. COZENS-HARDY.—I should answer your Lordship's question by saying that he is judicially to determine. Of course he had the opportunity of taking the opinion of the court and ultimately the opinion of your Lordships of the Privy Council.

Mr. BLAKE.—He had not at the date of the Act.

Mr. COZENS-HARDY.—That is true.

Lord WATSON.—I should think that was the only case in which an appeal contemplated—if that case is included it is the only case in which an appeal contemplated by subsection 2 would be judicial.

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The Lord CHANCELLOR.—You would have a rather curious state of things, because supposing the governor said that it was *ultra vires*, and accordingly told them to pass an Act, and they did not, and then the Canadian Parliament proceeds to legislate, and then the matter goes on as it might before a court of justice——

Lord WATSON.—And both Acts are invalid?

Mr. COZENS-HARDY.—That may be.

Lord WATSON.—I apprehend that the appeal to the governor is an appeal to the governor's discretion. It is a political administrative appeal and not a judicial appeal in any proper sense of the term, and in the same way after he has decided the same latitude of discretion is given to the Dominion Parliament. They may legislate or not as they think fit.

Mr. BLAKE.—Only within the limits of his discretion; they cannot go beyond.

Mr. COZENS-HARDY.—He has to decide whether it affects any right or privilege.

Lord WATSON.—That is not before us now.

Lord SHAND.—Suppose both were legitimate, an appeal to the court of law and an appeal to the Governor General in Council even in the case of an *ultra vires* statute that would not settle this question by any means. It might quite well be so.

Mr. COZENS-HARDY.—I was now dealing with the matter by steps. I say first of all this does include an appeal in respect of an *ultra vires* Act.

Lord SHAND.—You must no doubt look to the exact language of the section, but then you must see how it is controlled by the reason of the thing. I do not think it at all shuts out the question we have to deal with, even supposing it was done as you were suggesting.

Mr. COZENS-HARDY.—That may be so, but now what light does subsection 3 throw upon it? Subsection 3, I venture to think, throws a great light upon it and helps us very much. "In case any such provincial law as from time to time seems to the Governor General in Council requisite for the due execution of the provisions of this section." That must mean, I submit to your Lordships, to give effect to subsection 1 of section 22.

Lord WATSON.—It does not require legislation to give effect to the leading part, the introductory part of that section.

Mr. COZENS-HARDY.—Legislation might be necessary to wipe out an Act, whether wholly or in part.

The Lord CHANCELLOR.—To annul the Act altogether.

Mr. COZENS-HARDY.—To clear the statute-book of that which was null and void, which was *ultra vires*. It goes on, "or in case any decision of the Governor General in Council on any appeal under this section is not duly executed by the proper provincial authority in that behalf, then and in every such case, and so far only as the circumstances of each case require, the Parliament of Canada may make remedial laws for the due execution of the provisions of this section and of any decision of the Governor General in Council under this section."

The Lord CHANCELLOR.—Do you suggest that the Dominion Act of Parliament is to be an Act annulling a void enactment of the provincial parliament?

Mr. COZENS-HARDY.—That is my submission, because subsection 3 is divided into two parts, as Lord Watson pointed out. The first gives the Canadian Parliament power to legislate on the recommendation of the Governor General without any appeal to him under subsection 2. It is a separate and distinct power. The Governor General may say, "This Act which has been passed by the legislature of Manitoba is one which is *ultra vires*, one which is inconsistent with subsection 1. That ought not to be a matter of doubt that ought to be left to be decided by a private action which might be raised between a subject of Manitoba and some rating authority or otherwise, but it ought to be got rid of by the Parliament of Canada in order to secure "the due execution of the provisions of this section." The first part of subsection 3, I submit to your Lordships, must plainly apply and apply only to subsection 1.

The Lord CHANCELLOR.—I do not see why.

Mr. COZENS-HARDY.—My Lord, the first part of subsection 3 contemplates a case where no appeal has been made to him at all.

Lord MACNAGHTEN.—I do not quite follow that. You say the first part of subsection 3 applies to a case where there has been no appeal to him.

Mr. COZENS-HARDY.—I suggest so.

Lord MACNAGHTEN.—Why is that?

Mr. COZENS-HARDY.—The words are : “ In case any such provincial law as from time to time seems to the Governor General in Council requisite for the due execution of the provisions of this section.”

The Lord CHANCELLOR.—But the “ due execution of the provisions of this scheme ” means when there has been an appeal made to him, it is in order to carry out his views upon that appeal, that is all.

Mr. COZENS-HARDY.—With submission, is that consistent with the following words : “ Or in case any decision of the Governor General in Council on any appeal under this section is not duly executed by the proper provincial authority ”?

The Lord CHANCELLOR.—Yes, because there might be a decision which would not be a legislative Act. They might be affected in two ways, they might be affected by an administrative act, they might be affected by a legislative act, and in both cases therein is an appeal given.

Mr. COZENS-HARDY.—But subsection 3 deals with remedial laws in both cases.

The Lord CHANCELLOR.—It might be, if there was an appeal against an administrative act which was not put right, you might have to have a remedial law in order to take away that power which had been abused.

Mr. COZENS-HARDY.—I submit to your Lordship that subsection 3 is merely intended to provide for the due execution of the exclusive power of legislation in the matter of education which is given to the province of Manitoba, and that it has no reference whatever to anything except a matter which is outside the powers of Manitoba in this section, and something which is necessary to secure the due execution of the provisions of this section.

The Lord CHANCELLOR.—On that point of course we cannot but look to the effect of section 93 if that view be correct, because if “ provincial authority ” in section 93 does not include “ legislature ” in subsection 3, then it is quite clear—at least it strikes me so—that the appeal which is given by subsection 3 must apply to subsection 1.

Lord WATSON.—I do not understand this altogether. There was good deal of argument and a great deal of expression of opinion in the court below, which I hardly follow, upon the improbability of the Dominion legislature superseding the provincial legislature. They have done so in some cases, and the question is in what cases. They have most unquestionably substituted the Dominion legislature, and laid upon them the duty of considering and doing everything proper to be done to effect that which the provincial legislature ought to have done. That is to a very large extent at any rate affecting their legislative powers.

Mr. COZENS-HARDY.—This brings me, my Lord, to the next point I was coming to, which is this—I say it is contrary to principle that an admittedly *intra vires* statute cannot be revoked by the legislative body which creates it. Now, there is no similar restriction, so far as I am aware, to be found in the legislation of Canada. I have looked through the Act carefully, and I am not aware of any instance, nor have my learned friends referred to any instance in which an admittedly *intra vires* Act cannot be revoked by the body which admittedly rightly passed it originally.

Mr. BLAKE.—I was stopped on that point.

The Lord CHANCELLOR.—The revocation might give a right to appeal on the ground that it destroyed certain rights. For example, let me take a case. You say that it is applicable to the provisions of subsection 1. Supposing that there had been in Manitoba some rights and privileges (it was clearly thought there were) existing at the time of the union. Supposing that immediately after that the provincial parliament had passed a law putting into the shape of an enactment all the rights that existed, and repealed any pre-existing law. At that time those rights and

privileges would have been perfectly secured by that Act, and they would have been secured by that Act alone. Suppose they had repealed that Act, it would not have revived the former law. You say they have perfect power to repeal it, so they have, but the question would arise, what was the effect of that repeal.

Mr. COZENS-HARDY.—It would not be competent for them to interfere with a right existing by law prior to the union.

The Lord CHANCELLOR.—Quite so, and when you are saying that there must be an absolute right to repeal, it might be that their repeal would be effectual as to certain provisions, and ineffectual as to others. This right of repeal would not be complete, because there were certain rights which they could not affect, even by a repealing Act.

Lord WATSON.—You seem rather to ignore this fact that whilst it was not competent for them prejudicially to affect or to repeal rights and privileges with respect to denominational schools which were possessed by anybody prior to the union, it was entirely within their legislative competency to do anything to give effect to those rights.

Mr. COZENS-HARDY.—The view I present to your Lordships is this, not that there were no rights and privileges at the date of the union, because I do not understand your Lordships in the Barrett case decided that there were no rights or privileges existing with regard to denominational schools at the date of the union. The only decision was this, that there were no rights or privileges which were affected by the Act of 1890.

The Lord CHANCELLOR.—But those rights and privileges must have been of a very limited character.

Lord SHAND.—Can you suggest any rights or privileges prior to the union?

Mr. COZENS-HARDY.—I can suggest to your Lordships many rights which they had then which could have been interfered with. For instance, if an Act were passed compulsorily requiring every child to attend the public schools, and disabling any child attending denominational schools, that would be an interference with a right or privilege, and I apprehend that would have been an *ultra vires* Act, and that this board would have so decided.

The Lord CHANCELLOR.—Is that quite certain that they enjoyed the right or privilege of not going compulsorily to a public school?

Mr. COZENS-HARDY.—No, but they enjoyed the right or privilege of going to a denominational school, and if they are compelled to go to another school it necessarily follows that they cannot go to a denominational school. My construction, therefore, does not render subsection 2 nugatory, it leaves it perfectly operative, and there are many cases to which it might apply.

The Lord CHANCELLOR.—If you look at the corresponding subsection of section 93 and see what was the nature of the rights of the minority which it was intended to protect, it does not go very near that, I think, because you cannot look at section 93 of the original Act without seeing that the separate class, whether by that was meant the Catholics where the Protestants were in the majority, or whether it was meant specially for Protestants where Catholics were in the majority, it was the rights in respect of that particular class which were intended to be protected. Practically speaking, there is no such protection in Manitoba if you are right.

Mr. COZENS-HARDY.—That may be so, but of course the language of section 22 is very different from that of section 93 on that point.

The Lord CHANCELLOR.—I mean it is very difficult to shut one's eyes to the fact that at the time the Manitoba Act was passed—one is entitled to look at the circumstances—you had a Catholic and Protestant population nearly balanced; you had notoriously (for that you may certainly look at this legislation, and indeed it is common knowledge) the Catholic part of the population set upon separate schools for their denomination. It is with a view to the protection of rights of that sort that this legislation is passed. Practically your contention would place Manitoba in a worse position for the Catholic minority as it might be or the Protestant minority as it might be, in a position of less protection than you get in Ontario.

Mr. COZENS-HARDY.—I accept that. It is undoubtedly so. That is the effect of the legislation according to my submission. They are put in a different position, and

it may be in a worse position. Now the opposite view lands my learned friends, I venture to think, in this difficulty——

The Lord CHANCELLOR.—You have not yet grappled with my difficulty, it is not touched by any observations you have made. It is true that the language of subsection 2 seems to indicate that the Act of the legislature which is to be the subject of the right of appeal is not that which affects the rights referred to in subsection 1, because the language is altogether different. Subsection 1 deals with affecting “any right or privilege with respect to denominational schools which any class of persons have by law or practice in the province at the union;” subsection 2 in terms gives an appeal from “any Act of the legislature affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen’s subjects in relation to education.” The words are different, presumably they mean a different thing. It is for you to show that they must mean the same. The onus is entirely on you when those wide words are used.

Lord WATSON.—There is not only a change in the language used, but whereas in subsection 1 the right and privilege referred to is a specific and limited right and privilege, in the other it is in the widest possible terms, “any right or privilege.” There are no words of reference back to subsection 1.

The Lord CHANCELLOR.—You are asking us to limit very general wide words, and to construe them as if they were much narrower and applied only to the right referred to in the 1st subsection. Now, I do not say that in some cases there may not be arguments for saying that you must put, and that you cannot help putting, upon wide words a narrow meaning, but that meaning is only to be given if you are driven to it, if from some part of the Act you see that you cannot read it or give effect to it reasonably without doing so; *prima facie*, however, you have the words, and that is the point you have to grapple with.

Lord WATSON.—You infer some coercive words into the Act which imply that a more limited meaning must be given,

Lord SHAND.—The words of subsection 2 are “affecting any right or privilege.” That is very general, but then it is “affecting any right or privilege of the Protestant or Roman Catholic minority.” That is different language to the language of subsection 1.

Mr. COZENS-HARDY.—I am coming to that as a separate point, if your Lordship will pardon me.

Lord WATSON.—The limitation is in point of time in subsection 1; there is no limitation in point of time in subsection 2.

Mr. COZENS-HARDY.—The way I desire to put this to your Lordships is, that from the nature of the powers and from the context and from the reason of the thing, subsection 2 must be limited to an Act which infringes such a right or privilege as could not be touched by an *intra vires* Act, and I ask your Lordships to come to that conclusion, because in section 22 the exclusive power of making laws relating to education is given to the provincial legislature. I gather that the Canadian Parliament would have no power to pass a new Education Act: it could not do that.

The Lord CHANCELLOR.—Why not?

Mr. COZENS-HARDY.—All it could do was to make remedial laws.

The Lord CHANCELLOR.—It is not given exclusively. It is given exclusively, “subject to the following provisions,” and if you find the following provisions in certain cases enabled the Parliament of Canada to legislate, it seems to me that it means that so far it is not exclusive.

Mr. COZENS-HARDY.—But it is only “remedial laws for due execution of the provisions of this section.”

The Lord CHANCELLOR.—That is if an Act has been passed which on appeal is thought to contravene rights which are intended to be protected, that is intended to enable the Dominion of Canada to pass, if the legislature of the province will not pass a law relating to education which will set that right.

Lord MACNAGHTEN.—If the authority of the Dominion Parliament is once properly invoked, what limit is there to their powers of remedying any mischief that has been created?



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Mr. COZENS-HARDY.—All it could do would be to make “remedial laws for the due execution of the provisions of this section” in order to see that nothing goes beyond the provisions of this section, but they could not pass a new Educational Act.

Lord MACNAGHTEN.—It might be necessary, surely?

The Lord CHANCELLOR.—It might be necessary to determine that certain officials should only have certain limited powers, or it might be necessary to vest rights in trustees. There are a hundred cases where it might be necessary to give effect to the intention of this section and to protect the rights acquired. I am not dealing with the question whether there are any denominational schools.

Lord SHAND.—Supposing the legislature passed an Act which admittedly did affect these privileges prejudicially, your argument is that that is not a matter intended to be within their province at all.

Mr. COZENS-HARDY.—Does your Lordship refer to the question of dealing with an ante-union privilege?

Lord SHAND.—I understand that the contemplation of these sections is that in and for the province of Manitoba the provincial legislature is to have exclusive power?

Mr. COZENS-HARDY.—Certainly.

Lord SHAND.—But if they were to proceed to pass an Act of Parliament which admittedly and avowedly was intended to prejudice the rights of certain persons with regard to education, your argument is that it would be beyond their power?

Mr. COZENS-HARDY.—Yes.

Lord WATSON.—You start this part of your argument by saying that the legislature of Manitoba is to have exclusive legislative powers in the matter. But that is not in the Act. They are to have exclusive power except in so far as it is qualified by the provisions of the Act, and that leaves it open. We cannot assume that the legislature meant to give them the entire exclusive power without the qualification of these provisions, and the only question really is to what extent is their exclusive right qualified by the provisions of the section. You cannot take any benefit from the assumption that the legislature did give or meant to give them the whole power. They did not mean to give them the exclusive power.

Lord MACNAGHTEN.—They had the exclusive power till they overstepped the limits of the section. When they did that I do not see any limit to the remedy which the Dominion Parliament might apply, except the mischief which had to be remedied.

Lord WATSON.—I think they have gone rather beyond that. Unless your construction of subsection 2 is right, in other words if “any right or privilege” include the other rights, they have a legislative power and can affect those rights, but their legislation affecting those rights may be set aside by the Governor General, and if they will not give effect to the Governor General’s ruling then effect can be given to it by the Dominion Parliament.

Lord SHAND.—At the same time the expression used in giving power to the Dominion Parliament is “then and in every such case and as far only as the circumstances of each case require the Parliament of Canada may make remedial laws.”

Mr. COZENS-HARDY.—That is my point. I am now using this, of course, to meet the Lord Chancellor’s observation.

Lord SHAND.—That would mean putting things back as far as they could by remedial laws, not initiating a new law that might be mischievous in itself.

Lord WATSON.—I do not think it necessarily means that. I think “remedial laws” here means to do what the provincial legislature ought to have done in the execution of the Act.

Mr. COZENS-HARDY.—There is a limit imposed upon the exclusive power of the Manitoba legislature to correct laws.

Lord WATSON.—If it is anything it is a qualification of their exclusive power. It is simply to correct something that has been wrongly done, not to legislate themselves upon the subject of education one hair’s-breadth further than to set right what has been wrongly done.

Mr. COZENS-HARDY.—Exactly. Nothing is wrongly done which is *intra vires*.

The Lord CHANCELLOR.—That of course is the whole question.

Mr. COZENS-HARDY.—This Board has decided of course that the Act of 1890 was not wrongly done.

The LORD CHANCELLOR.—They have decided that it is *intra vires*. That is not saying that it is not wrongly done. I think there has been some confusion of view in some of the judgments below. It is said that this board has decided that the Act was *intra vires*, and that therefore it follows that they cannot infringe the provisions of subsection 2, but that of course is the whole question.

Mr. COZENS-HARDY.—What I desire to urge is, not that the Barrett case decided this. I do not think it did.

The LORD CHANCELLOR.—They have said that it did not infringe subsection 1 because it did not affect “any right or privilege with respect to denominational schools which any class of persons have by law or practice in the province at the union.” They have not said that it did not affect the rights or privileges of a Roman Catholic minority in relation to education.

Mr. COZENS-HARDY.—But what are the provisions of this section which can be applicable to a case like the present? There is no “remedial law” required in dealing with a statute of the Manitoba legislature which is *intra vires*. There is no “remedial law” necessary.

The LORD CHANCELLOR.—I confess the words “remedial law” point, to my mind, to legislation and not to merely annulling something which the legislature has said shall be annulled. You cannot call the mere execution of the section a “remedial law.” And they are not to go beyond what is necessary.

Lord SHAND.—And it is “in every such case and as far only as the circumstances of each case require.”

The LORD CHANCELLOR.—Yes. Now, it does not require at all remedial legislation to annul an *ultra vires* law.

Mr. COZENS-HARDY.—Except that it is the mode of getting rid of an Act.

Lord WATSON.—You suggest this would be a mere declaratory Act, declaring that the original law was wrong.

Mr. COZENS-HARDY.—Yes.

The LORD CHANCELLOR.—Is that not rather straining the words, “as far as the circumstances of each case require?” In that case “the circumstances of the case” would always “require” precisely the same thing—simply to annul the law.

Mr. COZENS-HARDY.—The circumstances might not require the annulment of the whole law. They might require a declaration of the invalidity of a part of the law.

The LORD CHANCELLOR.—But in each case it would be annulling a law; there would be no variation from case to case.

Mr. COZENS-HARDY.—No, it would be declaring that the law was either wholly or, as the circumstances of the case might require, partially void.

The LORD CHANCELLOR.—If that is all that was meant it would have been very simple to have put it in very different language. That is not a conclusive argument I quite agree, but the language does not seem to be very appropriate language. You say subsection 3 tends to show that subsection 2 must mean something less than at first sight it says. So far from that, the language of subsection 3 seems to me rather to point in the contrary direction.

Mr. COZENS-HARDY.—The way I endeavour to meet the Lord Chancellor’s observation in this. I say that section 22 anxiously provides that the Manitoba legislature is exclusively to have the power within certain limits, but that it is not intended to confer any general legislative power upon the Canadian Parliament.

Lord WATSON.—It is just the same as if it had been “subject to the exceptions hereinafter enacted, the provincial legislature shall have exclusive power.”

Lord SHAND.—But the exception is that they are to remedy anything as to which the Manitoba legislature goes wrong.

Mr. COZENS-HARDY.—Exactly.

The LORD CHANCELLOR.—Is it not conceivable legislation to say “We will trust to you the provincial legislature the power of dealing with education, but this is a question upon which there is known to be a keen feeling and a difference of opinion, and you are

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not to destroy any privileges or rights existing at the time of the union? Further than that, if you legislate within your powers the minority shall not be without protection; there shall be then an appeal to a superior authority, the Governor General in Council, and if he thinks that within your powers you have been depriving the minority of any right or privilege in relation to education then he may express that decision, and effect shall be given to that decision or may be given to that decision by the Dominion Parliament." I do not see anything extraordinary or inconceivable or revolting to one's notions in such legislation. I don't say that it follows, that that is the legislation; but then you are asking us apparently to abstain from giving to wide words their apparent meaning, because there would be something repugnant to ordinary notions in legislation of that description.

Mr. COZENS-HARDY.—Yes; that is the way I put it.

Lord WATSON.—As far as I can see, and as far as I understand, the Dominion Parliament have no power whatever to originate legislation with regard to education in the province. They have power to interfere, and that for remedial purposes only, when their attention is called to certain grievances by the Governor General, accompanied with the statement that the Governor General is of opinion that these grievances ought to be remedied in a particular way. Whether the Governor General must point out what that way is or leave it to the Parliament, I do not think it is necessary to determine.

Lord MACNAGHTEN.—And that the provincial legislature has declined to set matters right.

Mr. COZENS-HARDY.—With submission, is that last qualification right? The first part of subsection 3 does not seem to require that.

Lord WATSON.—That indicates that the legislation of the provincial parliament is not to be treated as *ultra vires*. They are to have a chance, if the Governor General thinks right, of remedying their defective legislation by putting in a clause for the protection of those rights and privileges referred to in subsection 2. If they decline to give protection in the way suggested, or in any way, then it becomes matter of reference to the Dominion Parliament.

The Lord CHANCELLOR.—Can you say that under the first part of subsection 3 the Governor General is to keep a sort of constant eye upon the legislation of the province? Is not that part of subsection 3 only applicable where there is an appeal under subsection 2, and where it is brought by means of that appeal to the notice of the Governor General? You suggest something much wider?

Mr. COZENS-HARDY.—Yes. The second part deals with cases where the provisions have not been duly executed. The first part is not limited to that.

Lord WATSON.—What is the meaning of these words? This is an exception from the exclusive powers of the province and an exception in favour of the Dominion Parliament. What power have the Dominion Parliament to interfere at all or to legislate upon the subject unless the Governor General has taken the initiative and expressed to the provincial legislature his opinion that certain legislation is necessary and the provincial legislature has declined to pass it?

Mr. COZENS-HARDY.—Your Lordship does not find that limitation in the first part of subsection 3, though you do in the second part.

Lord SHAND.—But suppose you are right in that, does it make any difference? It does not affect the construction of the previous clause. The mischief must occur before there can be any appeal.

Lord WATSON.—Your first contention is that the only appeal given by subsection 2 is an appeal in respect of an interference with a right or privilege referred to in subsection 1.

Mr. COZENS-HARDY.—Yes.

Lord WATSON.—If your interpretation of subsection 2 is right *cadit questio*, no such Appeal has been made to the Governor General in this case. On the other hand, if their Lordships should be of opinion that your construction is not right, and that subsection 2 brings in what have been called post-union rights and privileges acquired through legislation by the minority, it does not appear to me to be a very important

inquiry whether under that general classification, including all those rights a case falling under subsection 1 may or may not be also included. It becomes simply an academic question.

Mr. COZENS-HARDY.—Yes. I was only using it to make my point clear.

The Lord CHANCELLOR.—Your case is that the only portion of the section which is effective is the first, but what is the meaning of saying “any such provincial law as from time to time seems to the Governor General in Council requisite for the due execution of the provisions of this section” as distinguished from the decision of the Governor General in Council on any appeal?

Mr. COZENS-HARDY.—It may not of course be a law. It may be some administrative act of some administrative body.

That, my Lords, is what I desire to say on the first part of the case. Now I come to another part of the case to which I am not sure that my learned friends on the other side have quite so fully directed your Lordships' attention. Even if we are wrong and your Lordships should hold that an appeal does lie from a post-union statute it only lies of course if it affects any right or privilege of the Protestant or Roman Catholic minority in relation to education. On that it is necessary to ask your Lordships' attention to the legislation from 1870 up to and including the Act of 1890, because it is only that legislation which is stated to be interfered with or prejudicially affected by the Act of 1890.

Lord WATSON.—But how can you apply the words “provincial authority” if the rights and privileges are limited to those specified in subsection 1?

Mr. COZENS-HARDY.—There might be many administrative acts interfering with them.

Lord SHAND.—Then may I ask with what object you are going to refer to the legislation? Is it for the purpose of showing that there is no privilege interfered with?

Mr. COZENS-HARDY.—Yes; there is no right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to education which has been interfered with. Your Lordships will observe that these words are very peculiar. It is not “any right or privilege in the matter of education,” it is only “any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to education;” that is to say, it must be some right or privilege which a minority, as such, has under the acts as against a majority in a particular locality.

The Lord CHANCELLOR.—Not necessarily.

Mr. COZENS-HARDY.—I mean it is not a right or privilege which any one has, it must be some right or privilege which persons in the character of a minority have. The language is very peculiar.

The Lord CHANCELLOR.—Is not light thrown upon that by what we are certainly entitled to look at—subsection 3 of section 93?

Mr. COZENS-HARDY.—They are identical words there.

The Lord CHANCELLOR.—Yes, but the identical words there are preceded by certain words the insertion of which of course was natural, having regard to the provinces with which they were dealing, and the insertion of which was necessary in this section. But seeing that they are identical words, might not one look at the preliminary part of subsection 3 of section 93 to see what their object was?

Mr. COZENS-HARDY.—Yes, except this, of course—your Lordship rather anticipated my observation—you do not find those words at the beginning of sub-section 2.

The Lord CHANCELLOR.—You of course would not, because section 93 was dealing with the provinces then in or that might thereafter come in, to which those words would be applicable; section 22 of the Act of 1870 was dealing with a state of things in which they knew exactly what the provinces were. You do not need the general words applicable to an existing or future state of things in one or other of several provinces.

Mr. COZENS-HARDY.—No. It is legitimate, no doubt, to look at sub-section 3 of section 93, but still the fact remains that your Lordships must find as a fact, not merely that rights and privileges given to the whole community come under the Act, but it must be the rights and privileges of the Protestant minority or the Roman Catholic minority, as the case may be, in different parts of Manitoba.

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Lord WATSON.—You say it must be conferred *eo nomine*?

Mr. COZENS-HARDY.—Yes. Just as your Lordships in the Barrett case held that the only rights and privileges which were preserved were privileges that any class of persons had, so here the only privileges which are in any way to be considered are the rights or privileges of the Protestant or Roman Catholic minority of the Queen's subjects.

Lord SHAND.—But supposing in any district there is a minority, and that that minority is injured by the legislation?

Mr. COZENS-HARDY.—If they are injured, not as a minority, but if every member of the community is treated alike——

The Lord CHANCELLOR.—With the result that the minority, Protestant or Catholic, is injured.

Lord WATSON.—With the result that the minority are not quite so well treated as they were before.

Mr. COZENS-HARDY.—My submission will be, when I take your Lordships through the Acts, which I hope to do very shortly, that there is no part of this legislation which in any way does confer any right or privilege upon the Protestant or Roman Catholic minority.

The Lord CHANCELLOR.—Is it a privilege with reference to education to tax your own pockets and so have denominational education?

Mr. COZENS-HARDY.—The privilege of paying the taxes?

Lord SHAND.—The privilege of imposing taxes.

Mr. COZENS-HARDY.—The whole taxing system of these Acts is gone. They had a certain exemption from liability to pay taxes to schools of another faith.

Lord WATSON.—They had a subvention.

Mr. COZENS-HARDY.—Every school had a subvention.

Lord WATSON.—Not in their character as a minority.

The Lord CHANCELLOR.—This does not mean surely in their character as a minority, but it means those who from time to time form the minority who may be Roman Catholics at one time and Protestants at another, and perhaps Roman Catholics in one place and Protestants in another.

Lord WATSON.—I should doubt if minority has the sort of meaning you attribute to it. I think it plainly contemplates where the majority was powerful enough to carry in the provincial legislature measures which took away that which the majority were willing to surrender, but which the minority in the legislature did not agree to.

Mr. COZENS-HARDY.—Your Lordship is interpreting the word "minority" as meaning a minority in the Legislature.

Lord WATSON.—A minority in the state. They do not have to go into every village and find who is the minority there, or into every district and find who is the minority there, and give the minority in that district, because they happen to be a majority in the other place, no remedy.

Mr. COZENS-HARDY.—If that be, your Lordships, true, your Lordship is striking out the words "Protestants or Roman Catholics."

The Lord CHANCELLOR.—No, because it might be at any future time. At one time being a Protestant majority and at another time a Catholic majority. At the time this Act was passed it may have been contemplated that the Catholics were likely to become a minority.

Lord WATSON.—It is quite obvious from the division into districts under the Act of 1890 that there are Catholic and Protestant districts, and in some places you find under the administration of that Act they are all Catholics together, and in a great majority, but they are the legislative minority, and they feel aggrieved because they have not any denominational schools. They have unsectarian schools with certain rules, and they are advised by an Advisory Board to use their discretion of saying what books Catholic children shall be allowed to use in the course of education, and such religious exercises as are permitted.

Mr. COZENS-HARDY.—I was going to refer to the passage which Lord Watson has alluded to, namely that in Manitoba it was perfectly notorious there were certain dis-

tricts in which there was a Protestant minority, and certain other districts where there was a Catholic minority. If that be the view, I quite admit that there may be provisions in those intermediate statutes—

Lord WATSON.—They are people who, if they had been a majority in the state instead of a minority, would have taken care that that legislation would not have become law.

Mr. COZENS-HARDY.—Then, my Lords, I have put to your Lordships such observations as occur to me.

Lord SHAND.—Has it any different meaning than this—that if in any district a minority, Protestants or Catholics, are injuriously affected—that raises a question?

Mr. COZENS-HARDY.—That is the view I desire to put before your Lordships.

The Lord CHANCELLOR.—That may be, but it is not necessary to determine that. It may be it includes local minorities, but it is perhaps not necessary to determine that. It includes also the total population. I do not say it might not be applicable to local minorities, but local minorities if on the poll a majority have protection in their own hands. It is not for the Governor or the Dominion Parliament to interfere and set it aside. It may be the wishes of the majority of Catholics.

Lord WATSON.—One should not expect any person to admit he had the matter in his own hands. He could not establish, no matter how much he was in the majority anything but a non-sectarian school.

Mr. COZENS-HARDY.—He could not. He can open as many denominational schools as he likes.

The Lord CHANCELLOR.—But he would have to pay his quota to the other schools.

Lord WATSON.—He cannot create a state-aided school.

Mr. COZENS-HARDY.—No. State aid can only be given to such public schools as are contemplated by the Act.

Lord WATSON.—He would have to contribute to the state-aided schools as well.

Mr. COZENS-HARDY.—My Lords, these are the grounds on which, on behalf of the legislature of Manitoba, I submit to your Lordships that the Supreme Court of Canada were right, and that the powers of the legislature cannot be interfered with in a matter which is *intra vires* of the legislature by an appeal to the Governor General of Canada, who apparently claims to exercise his powers not in his judicial character but from political considerations, which may be, and probably must be, foreign to those which would have weight in Manitoba.

Mr. HALDANE.—My Lords, if I had been following my learned friend, Mr. Cozens-Hardy, in an ordinary appeal, I should not have presumed to add much to what he has said, but the magnitude of the case and, I may add, its difficulty makes me desire again to touch upon some of the grounds which he has already gone over. I promise your Lordships I will not occupy an undue or long period of your time.

The Lord CHANCELLOR.—The case is such, and its difficulty such, that no excuse need be made for any assistance you can render.

Mr. HALDANE.—I am sure I shall have your Lordships' indulgence. Now, my Lords, there are two points which my learned friend has stated at the opening of his address, and on those two points not only am I bound to concur with him but I do most sincerely concur with him. We are here to argue two matters of substance, and two matters of substance only. The *first* is whether subsection 1 does not exhaustively define the limits which are set to the legislative powers of the provincial legislature and whether the provisions of subsection 2 are not merely provisions expressed in general terms, covering, it may be, a wider field, but which are to be read as consistent with, and not as cutting down the language of subsection 1. That is the first point. The *second* is whether the conditions of an appeal to the Governor General have actually arisen by reason of the fact that a right or privilege of the minority within the meaning of subsection 2 has been affected?

My Lords, there was a further question which has been much discussed in the course of this case, and that is whether we have anything to do on this appeal with the British North America Act, 1867, or whether the question was exclusively governed by section 22 of the Manitoba Act. To my mind that is a very important question.

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Your Lordships perhaps may be taken to have indicated that probably section 22 contains the complete code of the provisions subject to which exclusive power in educational matters is given to the provincial legislature. Whether it be so or not seems to me to matter very little for the purposes of this appeal. I do not think on the one hand it much assists the respondents to say that it does; and on the other other hand it makes very little difference to the appellants.

The Lord CHANCELLOR.—Do you concede or dispute that in the 93rd section “provincial authority” includes the legislature?

Mr. HALDANE.—I think, my Lord, that under subsection 2 it does indicate the legislature for some purposes.

The Lord CHANCELLOR.—One further question. Suppose in accordance with the provisions of subsection 3, or within the terms of the provisions of subsection 3, denominational schools or separate or dissentient schools were established in the province thereafter, would the rights intended to be protected in that case be only those that had existed at the time of the union?

Mr. HALDANE.—Yes, I think so.

The Lord CHANCELLOR.—What is the use or meaning of putting in the words “or is thereafter established” if subsection 3 only applies in either case to retain that which exists at the time of the union? Why should the preservation of those rights be in any way dependent on an appeal, or be dependent on an act of the Dominion Parliament?

Mr. HALDANE.—Because it was not merely to control the provincial legislature; it was meant to control acts of the executive and the judicial authorities, as I read the section.

The Lord CHANCELLOR.—Admitting that, would those words have been inserted, “or is thereafter established by the legislature,” if it had been intended and had already been enacted that you were to protect all those rights existing at the time of the union, which is quite independent of whether separate or dissentient schools had been established or not?

Mr. HALDANE.—As I read these words they are words limiting the right of appeal, and not very apt words, and it seems to me that it is probable that it is for that reason the expression is omitted when you come to subsection 2 of the Manitoba Act.

The Lord CHANCELLOR.—Why should they have meant to have limited the right of appeal in the case of provinces other than Ontario and Quebec to a province which afterwards established separate or dissentient schools? The right of appeal was a right of appeal to secure the protection given by subsection 1 to all of them alike at the outset.

Mr. HALDANE.—I answer that by saying that it appears to me that the draftsmen of these Constitutional Acts changed their minds when they came to Subsection 2 of the Manitoba Act. My explanation of the omission of those words in the Manitoba Act is that it was made when they found they had introduced an inapt limitation to the right of appeal. Why in the world should there be that limitation in subsection 3 of the British North America Act, and yet when you come to look at it they are words of limitation?

The Lord CHANCELLOR.—In one view it is perfectly intelligible if what was intended to be protected by subsection 3 were rights then existing or thereafter created in relation to denominational schools; then it is perfectly intelligible why they put in both limbs of the appeal part in subsection 2.

Mr. HALDANE.—They have not said that in terms of subsection 3 as drawn.

The Lord CHANCELLOR.—Something very much like it. They have said “Where in any province a system of separate or dissentient schools exists by law at the union, or is thereafter established by the legislature of the province.”

Mr. HALDANE.—There is to be an appeal.

The Lord CHANCELLOR.—An appeal shall lie from what?

Mr. HALDANE.—From any act or decision of any provincial authority.

The Lord CHANCELLOR.—“Affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen’s subjects in relation to education.” The system of schools which was first referred to was a system of schools for the benefit of the

minority. The words "separate or dissentient" indicate it. "Thereafter established" appears to apply to separate or dissentient schools, namely to schools of the minority. Does not that indicate an intention where such schools are established to give an appeal against any infringement of rights in relation to such schools?

Mr. HALDANE.—I am not entitled to put a question, but if I were I would ask why does not "right or privilege" in that 3rd subsection mean right or privilege for the time being, leaving the operation of subsection 1 uncontrolled? That at any rate is my submission on the construction, but I must come back to that in dealing with my first point.

Now, my Lords, we have to construe provisions which are admittedly and on the face of them difficult to construe, and ambiguous, and for that purpose it seems to me important we should bear in mind what the scheme of the British North America Act was, because obviously the Manitoba Act, which as your Lordships know by the statute of the subsequent year was made an Imperial Act, was passed on the lines of the British North America Act. The British North America Act had a perfectly distinct plan. That plan is expressed in the preamble to the act—to establish a federal constitution in Canada called the Dominion, including in the term the "Dominion" the aggregate of the provincial legislatures as well as the Dominion Parliament itself, and to provide for the federal distribution of the executive power as well as of the legislative power. The scheme of the act is not to make the Dominion Parliament in any sense sovereign or supreme over the provincial legislatures. The scheme of the act is to distribute. "Federally" is an inaccurate and inapt term, and how it came to be used in this statute it is difficult to conceive; but what really took place was this: The imperial legislature intended to part with certain functions which I suppose theoretically are as much its functions to-day as they were then, but which were delegated with the indication that the imperial legislature did not intend to interfere in Canadian matters. They were delegated to the Dominion Parliament on the one hand and to the provincial legislatures on the other hand.

Lord WATSON.—The intention was obviously to distribute the whole complement of legislative power between the two legislatures.

Mr. HALDANE.—Yes; there is nothing reserved in terms to the Imperial Parliament, and it has been only in rare cases in some matters relating to copyright and merchant shipping and other international matters, that there has been legislation which would affect the subjects which were so distributed or delegated.

Now, my Lords, the scheme of the distribution was not to make one Parliament supreme over the other in matters which were delegated. The scheme of the distribution was distribution proper by creating co-ordinate legislatures; the provincial legislature exercising such legislative functions as were, properly speaking, of a provincial nature and the Dominion Parliament exercising the other functions. There are certain cases, two occur to me at this moment, in which there was a slight departure from this, but these two were perfectly specific. The case of agriculture is mentioned in section 95. The provincial legislature may make laws as well relating to agriculture as to immigration. But that, however, is subject to this, that the Dominion Parliament if afterwards it should think fit to interfere may take that subject out of the hands of the provincial legislature. Then there is another instance, which is a little different. You will remember that some of your Lordships sat and heard an appeal in a case that came before this board last year about bankruptcy and insolvency.

Lord WATSON.—There have been a great number of cases. There are a great number on the articles in the specification in the clauses 91 and 92 which interlace.

Lord SHAND.—Section 95 is subject to this qualification, "And any law of the legislature of a province relating to agriculture or to immigration shall have effect in and for the province as long and as far only as it is not repugnant to any Act of Parliament of Canada." Parliament seems to be the supreme authority there.

Mr. HALDANE.—When it is supreme it is said it is to be supreme, and the question of agriculture is so far as I am aware the only one in the Act in which there is a provision analogous to that. When it is intended that the Dominion shall have power to take matters out of the hands of the provinces, as it was in that case, it was so said. With



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reference to the observation of my Lord Watson as to the subjects interlacing, your Lordships have laid down more than once that they do not theoretically interlace, but that subjects that are within Dominion cognizance in one aspect (I am endeavouring to quote the words of one of the decisions of your Lordships' Board) are within provincial cognizance in another aspect.

Lord WATSON.—So long as the Dominion do not legislate.

Mr. HALDANE.—The Dominion, of course, having regard to the provisions of section 92 cannot legislate in anything properly provincial. You have only to look at section 92 to see it has no such power. What there is is this. All matters which are of a provincial nature or of a nature exclusively under section 92, are within the competence of the provincial legislature, and your Lordships have ruled time after time at this board that attempted legislation by the Dominion is absolutely *ultra vires* if once you get that condition established. Therefore it cannot be said that there is any indication in the Act of any intention on the part of the Imperial Parliament that the Dominion Parliament should have an overhauling power. That is not the scheme. It is only when you get what is outside section 92—it may be it is another aspect of the same subject, but still it is an aspect that is outside—that you find it in section 91; and I was reminding your Lordships of your decision last year in the insolvency case in which you held that notwithstanding bankruptcy and insolvency belong to the Dominion it still was competent so long as there was no Dominion legislation for the province under “property and civil rights” to deal with some things, which in one aspect would belong to bankruptcy and insolvency. But that is not an interference with the absolute co-ordinate power of the provincial legislature. It is simply this, that your Lordships held that on the true construction a certain matter came within section 91.

Now, my Lords, that being the scheme of sections 91 and 92, and all other cases such as that of agriculture being specially dealt with, what your Lordships would expect to find, if it had been intended or even contemplated that the Dominion Parliament should in the present case have authority in respect of the legislation of the provinces, would be that that should be given in clear language. It may be that it has been given in clear language. That is the question to be determined.

The Lord CHANCELLOR.—Education has a code to itself. I am not sure that what you have been saying really tells in favour of your argument particularly, because that is dealt with exactly. Educational questions would come within “property and civil rights” in the provinces. I suppose legislation as to education would come within legislation as to civil rights.

Mr. HALDANE.—It might be so, or “local matters” at the end.

The Lord CHANCELLOR.—But you have it taken out of the general provisions dealing with either the power of the Dominion Parliament or the exclusive power of the provincial legislature as a thing which cannot be dealt with under either of them. It must be dealt with by itself.

Lord WATSON.—I have no doubt the province would have power under the 16th head “Generally all matters of a merely local or private nature in the provinces.”

Mr. HALDANE.—I think it is possible it might have been held to come under that.

Lord WATSON.—It is a matter purely local.

Mr. HALDANE.—It is treated separately, but the point of my argument is not quite that. It is this, that the scheme being that of co-ordinate distribution when you come to the Code of Education in the 22nd section of the Manitoba Act, which I will take as the section on which I shall argue, you have the matter assigned in the first instance to the provincial legislature, I quite admit “subject and according to the following provisions,” but you begin by having education assigned as a matter with which the provincial authorities deal.

The Lord CHANCELLOR.—Would you dispute that the whole of the educational code of this Act suggests a distrust in this issue of the provincial legislature; that there is a fear that they may not deal fairly with the rights of the minority?

Mr. HALDANE.—With the rights of the minority as particularly specified. How are they specified, is the question.

The Lord CHANCELLOR.—That is another thing. Is not that the basis of these educational provisions, that it was not proposed to trust entirely, as in other cases, to the power of the majority to determine what the legislation should be.

Mr. HALDANE.—I think it is so. I think it is intended certainly to make some special provision. But now, my Lords, that does not so far affect the point which I am upon, which is, that we start with the assignment of education to the provincial legislative authority, and certain limitations and certain limitations only defined as limiting that right, and when you come to the construction of the limitative provisions, we suggest to your Lordships as the canon of construction, that things must be presumed to be within the competence of the provincial legislature, excepting in so far as they have been taken away by the limitative provisions.

Lord WATSON.—I think you are entitled to make that observation by the terms of the clause itself.

Mr. HALDANE.—Yes.

Lord WATSON.—Then it has on the other side to be shown that this is one of the matters excepted.

Mr. HALDANE.—The burden must be on them to show it is so.

Lord WATSON.—It does not rest on that only.

Mr. HALDANE.—Of course it is always a question of construction and a question of construction merely; but we start with that.

Now, my Lords, that being so, and bearing that in mind, I pass to the construction of the section, and this is the construction which I suggest for your Lordships' consideration: that subsection 2 exhausts the limitations upon the legislative powers of the provincial legislature. Starting with that presumption that the legislature is to have the supervision of educational matters and the power of legislation, and starting with this that you have got these words specifying the provisions according to which the right is limited, you come in subsection 1 to what I suggest is the only limitation upon the power of the legislature to make laws. It is not to prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law or practice in the province at the union. If those words had stood alone there would have been no doubt they would have been equivalent to an affirmative statement that in respect of any other legislation the provincial legislature had complete competence. Then we come to subsection 2, and the question is whether subsection 2 cuts down what has already been stated in subsection 1.

The Lord CHANCELLOR.—Cuts down? I do not understand that.

Mr. HALDANE.—Yes.

The Lord CHANCELLOR.—Do you say it cuts down?

Mr. HALDANE.—I say it does not, but in subsection 2 you have merely general provisions to be read consistently with what has gone before.

The Lord CHANCELLOR.—I do not think anybody suggests it cuts down. I thought the suggestion had been that it enlarged.

Mr. HALDANE.—On subsection 1 I have stated what my argument is: that you have got an exhaustive definition of such limitations as there are upon the legislative power of the provincial authority.

Lord SHAND.—You are going on to say that subsection 2 deals merely with rights which persons had at the union?

Mr. HALDANE.—No, my Lord, not necessarily so in the case of non-legislative Acts and decisions.

Lord SHAND.—It is contended on the other side that it deals with rights that persons may have acquired *post*-union.

Mr. HALDANE.—That is not quite my argument. In subsection 1 you have negatively a restriction upon the power of the legislature and affirmatively a statement by implication that the legislature has complete power to make any law as to education it pleases provided they do not infringe rights and privileges at the union and as incident to that there is an appeal if a law is so made.

The Lord CHANCELLOR.—You cannot separate it from this, that these powers are all subject to the whole of the following provisions.

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Mr. HALDANE.—I am taking it step by step, and I am asking whether it is not possible to come to a construction of these two sections, which will leave the language of subsection 1, which it is to be observed expressly limits the restrictions of the legislative powers to such rights as there are existing at the union—whether it is not possible to so construe the language of subsection 2 as to leave subsection 1 operative as fully as according to its language it would have been if it stood alone. My objection is that there is no inconsistency between subsection 2 and subsection 1; that subsection 2 in no sense cuts down what is given by subsection 1. Subsection 2, I suggest to your Lordships, has a much wider operation and bearing and is of much wider scope than subsection 1. It is intended to deal not merely, perhaps not even primarily, with legislative matters but with the executive and judicial authorities in the province.

The Lord CHANCELLOR.—Judicial, do you say?

Mr. HALDANE.—I think so. A court would be a provincial authority, and I will tell your Lordships why. Let me remind your Lordships first that at the date of the passing of this Act in 1870 and in 1871 when the Imperial legislature confirmed it, there was no Supreme Court in Canada. There was power under the British North America Act to organize one, but none had been organized. On these federal questions the appeal would have had to come straight to your Lordships' Board, and that would have been a very serious and onerous thing for the Catholic minority to have undertaken.

The Lord CHANCELLOR.—What the judge did would be the interpretation of the law *intra vires*.

Mr. HALDANE.—Yes.

The Lord CHANCELLOR.—Then, was the Governor General in Council to decide that the judge had misinterpreted the law?

Mr. HALDANE.—Yes.

The Lord CHANCELLOR.—That is rather startling.

Lord MACNAGHTEN.—A court of appeal on matters of law from the decision of a competent judge?

Mr. HALDANE.—A court of appeal from a decision of a provincial court, which was the only court which could give judgment.

Lord MACNAGHTEN.—It is a most startling suggestion.

The Lord CHANCELLOR.—An absolute court with an appeal to this board. Supposing the Governor General in Council said it was *ultra vires* and requested the Dominion legislature to legislate, and then it came up to this board and this board held it *intra vires*, that would create an awkward situation.

Mr. HALDANE.—The position which the Governor General and the Dominion legislature would have been in, would be a matter for them to consider, but it seems to me these words are wide enough to cover the reference. It is called an appeal in terms and it is spoken of as a decision. Take the words from the beginning, "An appeal shall lie to the Governor General in Council from any Act or decision of the legislature of the province or of any provincial authority." Supposing the Governor General under that Act were deciding a question of the validity of a by-law, how could it have been raised as an answer to him that there was a decision of a judge of the Queen's Bench in Manitoba affirming the validity of the by-law?

The Lord CHANCELLOR.—There are only two remedies given: The first is in case they do not pass the provincial law he requires them to pass, or in case a decision of his is not duly executed by the proper provincial authority; that is to say, if he has reversed the judgment and effect is not given to it by the court below.

Mr. HALDANE.—It may be unusual, but the whole situation is unusual. You have here a position of matters in which it was desirable to protect the rights of minorities and in which there was no way of dealing with the Acts of the local authorities of the provinces, except by the expensive process of appeal to your Lordships here, and further than that, in which there was no machinery by which the minority, whether Protestant or Catholic, could bring the question of the validity of legislation before any tribunal at all.

Lord WATSON.—In the Winnipeg case it was said, "Their Lordships are satisfied that the provisions of subsections 2 and 3," that is the Manitoba Act, "do not operate to withdraw such a question as that involved in the present case from the jurisdiction of the ordinary tribunals of the country."

Lord MACNAGHTEN.—Mr. Haldane says it does not withdraw it, but it makes the Governor a supreme court of appeal from the decisions, and if the court below will not make the order of the Governor General an order of that particular court, then he has to apply to the legislature—a most extraordinary position to put judges in—there being also a right of appeal, I suppose, to Her Majesty in Council.

Mr. HALDANE.—A right of appeal, no doubt, if the prerogative is exercised.

Lord MACNAGHTEN.—That would get them in a very nice mess.

Mr. HALDANE.—Your Lordships put that difficulty, but I put another difficulty.

Lord WATSON.—Supposing the legislature were to say, "We will abide by the decision of the court. The court have held this wrong. We will take it off the statute-book." And then you appeal, and the Governor General says, "This must be amended and made an Act."

Mr. HALDANE.—Lord Watson suggests it to me as if it were a difficulty that arose out of my argument, but it must arise out of the terms of the statute whenever an appeal is brought on the allegation that a right or privilege has been infringed. What is that in nine cases out of ten but a question of law? Supposing there has been a decision of a magistrate at Manitoba on the subject, is the Governor General bound, or his action fettered? Can the Dominion Parliament be excluded from legislating?

Lord WATSON.—The statute may be made consistent in that view by reading it in this way, that subsection 1 gives an absolute remedy for every interference that falls within it, every interference with a right or privilege existing at the date of the union, and a separate provision was made for rights and privileges springing up afterwards which are not dealt with in subsection 1.

Mr. HALDANE.—That is a possible construction, but there is another construction equally possible, and that I venture to submit. It is the one I am suggesting to your Lordships. It may involve in the functions of the Governor General that he might decide constitutional questions and questions of law. It may involve in it that he may not be obeyed.

Lord WATSON.—It had ceased to be a constitutional question, and resolved itself into a mere question of fact. The decision is such that in one way it necessitated the application of the Act which made the Act of the provincial legislature void. When that provision was made in subsection 1 that question appears to me to have ceased to be a constitutional question, and to have resolved itself into a simple question of fact.

Mr. HALDANE.—Take it upon the construction which has been expressed by some of your Lordships, and which I am endeavouring to combat.

Lord WATSON.—What constitutional question has the court to consider when it is merely determining whether such privilege existed—

Mr. HALDANE.—Perhaps I used the word "constitutional" inaccurately there; it is a question of law—

Lord WATSON.—Whether a state of things existed that brought into operation a condition of nullity imposed by Act of Parliament.

The Lord CHANCELLOR.—If you were once to concede that subsection 2 applied to rights and privileges acquired by post-union legislation, or including them at all events, the question whether a right or privilege had been affected really would be a question of fact in a sense. You may say it is a question of law possibly in a sense, but not in the ordinary sense, because there would be no difficulty in any person of common sense determining whether what had been given, which was for his benefit, was taken away. It would not be a question of law.

Mr. HALDANE.—It would be a question whether this was a right or privilege of the minority always. That is a question of law.

The Lord CHANCELLOR.—It may be in that sense a question of law.

Mr. HALDANE.—So much so that it is submitted, and the sixth question on which the Governor General has asked your Lordships' assistance and advice is whether this

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particular Act of 1890 does infringe a right or privilege of a minority within the meaning of subsection 2.

The Lord CHANCELLOR.—Because the contention is that that covers the point that the second subsection does not cover any right or privilege acquired after the union.

Mr. HALDANE.—I think more than that. It is not put so. That is not the way the question is put. The question which is put is this—

Lord WATSON.—That is splitting one question, or two at the outside, into six.

Mr. HALDANE.—“Did the Acts of Manitoba relating to education passed prior to the session of 1890 confer on or continue to the minority a ‘right or privilege in relation to education’ within the meaning of subsection 2 of section 22 of the Manitoba Act.” And then it puts a number of alternatives, I need not consider it yet in detail, but that seems to me to be the question which your Lordships, I will not say are bound to advise upon, because you are not bound by any Canadian statute at all, but which the Canadian statute which makes you a court of appeal *ad hoc* from the Supreme Court, necessitates your answering.

Lord WATSON.—It is a mere corollary of answers given by the previous questions—

Mr. HALDANE.—I think so—

Lord WATSON.—If these words in subsection 2 include any right or privilege conferred by a statute intermediate between the date of union and that of 1890.

Mr. HALDANE.—I misunderstood your Lordship in suggesting an affirmative answer. Still there remains the point; but it is an abstract and academic question which nobody may ever raise.

Lord WATSON.—All we have got to say is whether it raises such a *prima facie* case that the Governor General ought to proceed with the appeal.

Mr. HALDANE.—The government of Manitoba is not here to argue at your Lordship's bar an abstract or academic questions on the constitution. They are only here because they hold that a condition precedent to a right of appeal to the Governor General has not arisen.

Lord WATSON.—If there is any intermediate privilege conferred it is unnecessary for us to decide whether it is struck at by the Act of 1890.

Mr. BLAKE.—Yes, that is one of the questions. If your Lordship will look at the latter part of the sixth question, it is the last limb of the sixth question.

Lord WATSON.—Whether the Act of 1890 affects any right only in such manner as that an appeal will lie. That is all.

Mr. BLAKE.—Quite so.

The Lord CHANCELLOR.—It seems to me that if subsection 2 refers to privileges and rights created by post-union legislation, then it is a question of fact for the government to determine, rather than a question of law, whether any privileges or rights acquired by post-union legislation were being interfered with by the Acts of 1890.

Mr. HALDANE.—Can it be said to be a question of fact? If we are dealing simply with the right or privilege which is the creation of statute, surely the condition precedent of the Governor General's appeal arises on the consideration of the two statutes.

The Lord CHANCELLOR.—But it may be a question of fact and not one of law. There is no mystery about the words “right or privilege.” A right is a right and a privilege is a privilege, and the question is whether a man's rights become less or his privileges become less. If so they are affected.

Mr. HALDANE.—The learned judges in the court below who assumed a good many things, seemed to have assumed that this was a simpler question than we venture to suggest to your Lordships it is. I will keep that point, and say a few words on it when I come to subsection 2. I am anxious to follow out just now a point that arose a few minutes ago on the position of the Governor General. As I understand the other side it involves this, that if the meanest court of Manitoba had given a decision that a statute was *intra vires* the jurisdiction of the Governor General was ousted. It comes to that.

The Lord CHANCELLOR.—Nobody suggests that though *intra vires*, it might still be a matter of appeal to him.

Mr. HALDANE.—Well, my Lord, that is hardly our proposition.

The Lord CHANCELLOR.—No, your proposition is not that.

Mr. HALDANE.—Still—matter of appeal to your Lordships here. Let me point out this. It might have been some man in humble circumstances sued for his school fees or school rate that he had not paid up, and he would not be likely to incur the expense of coming here. In that case it might well be that it was not competent to the Catholic minority as distinguished from the individual party to raise the question. It might well be in the contemplation of those who framed the Act that it was desirable to give to the Catholic minority an appeal to another tribunal, that tribunal being the Governor General, who as we know is not only able to get the assistance of his council and now of the Supreme Court, but even if necessary to get the advice of this Board. It may well be that that was the intention of those who framed those provisions, and I suggest that that was so, that when you come to these questions involving the rights of minorities, it was intended to constitute the Governor General a special tribunal to deal with them, dealing it may be to a limited extent with matters of policy, but probably dealing with these questions which indeed were the only questions which, in the first instance were submitted to him, whether the right or privilege of a minority had been interfered with.

Now, observe how consistently that construction works out. Taking the first section it exhaustively defines the competence of the provincial legislature. The second subsection deals with all sorts of acts. It would deal primarily with executive and administrative acts.

The Lord CHANCELLOR.—Not primarily, because the other is mentioned first.

Mr. HALDANE.—I will tell your Lordship why I say primarily. Because in subsection 3 of section 93 of the British North America Act it seems, whatever may be the scope of the words they have used, that in using the words "Act or decision of the provincial authority" the legislature was contemplating executive and administrative authority.

The Lord CHANCELLOR.—When they come to deal with Manitoba, if that is the principle, they put the legislative in the fore front to show there is no mistake about it, and that they are thinking of that first.

Mr. HALDANE.—Quite true. But they take the words "Act or decision," which are the words they have selected in contra-distinction to "law" in the beginning of the section from the British North America Act, and they make use of them in a sense still contra-distinguished from "law," which I suggest shows they primarily had in view executive and administrative acts.

Lord SHAND.—What administrative or executive act do you suggest as an act of the legislature?

Mr. HALDANE.—It may be that the legislature may pass a resolution.

The Lord CHANCELLOR.—The legislature consists of the Lieutenant Governor and the House, and therefore no resolution would be an Act of the legislature.

Mr. HALDANE.—Supposing that was so, and supposing that the legislature meant nothing short of the three component elements?

Mr. BLAKE.—Two.

Mr. HALDANE.—I thought there was an upper chamber.

Mr. BLAKE.—That was abolished many years ago. I did it.

Mr. HALDANE.—I only knew it from what it was under the original statutes.

Mr. BLAKE.—There was an upper house of seven; a nominated house.

Mr. HALDANE.—My friend, Mr. Blake, amongst the interesting things he told us, did not tell us how it was abolished. I was under the impression that at the time when the legislature of Manitoba was constituted there were two houses.

The Lord CHANCELLOR.—There were two at this time, in 1870.

Mr. HALDANE.—I think there were.

Mr. BLAKE.—Yes; it was so till it was abolished.

The Lord CHANCELLOR.—Then the legislature here meant the Lieutenant Governor and the two houses.

Mr. BLAKE.—That is quite true.

Mr. HALDANE.—That is so. Assume the legislature meant the complete legislature, and that that term was not wide enough to cover the resolution of one House

or two Houses, without the assent of the Lieutenant Governor, still that leaves me scope for the section, and abundant scope. If am right in saying that the Governor General was not to be bound by the decision of the Manitoba tribunal in the conclusions he came to as to what I have called constitutionality, perhaps I had better call it *ultra vires* to avoid confusion, it might well be that an Act was passed by the Manitoba legislature which contravened the provision of the subsection 1 and was therefore void, and yet had been pronounced by the Manitoba tribunal, taking too friendly a view of the rights of the province, to be *intra vires*. My Lords, then you would leave upon the statute-book administered by the courts an Act of the Manitoba legislature which it would be extremely expedient to get rid of. It is obvious it would be desirable to have something more than a bare abstract decision, and that there should be legislation following upon that which should declare the true position of matters upon the question of *ultra vires* or *intra vires* by way of enforcing the decision of the Governor General, and what I am suggesting to your Lordships is that subsection 2 has been drawn in wide and general terms, wide and general enough to cover acts or decisions of the legislature, not really "laws," because void, for the word "decision" applies to the legislature too, of that nature. It was also primarily intended to cover executive and administrative acts of the authorities in the province.

Now, my lords, if that construction is the right one it harmonises both. It makes subsection 1 a complete code of the limitation of the power of the legislature; it makes subsection 2 deal with those other matters which the Governor General had to be cognizant of, and which might be concerned with rights or privileges for the time being existing, and the infringement of those by the executive.

The Lord CHANCELLOR.—Why? How for the time being existing? All that subsection 1 deals with is those which existed at the union.

Mr. HALDANE.—I am talking of subsection 2.

The Lord CHANCELLOR.—If subsection 2 deals with others than those existing at the union you must concede that it deals with rights that have arisen after the union came into existence.

Mr. HALDANE.—But subject to the power of the legislature to repeal or alter.

The Lord CHANCELLOR.—If you concede that rights of the minority in relation to education include rights acquired by post union legislation, then an appeal against an Act depriving them of any of those rights would come within the language of subsection 2.

Mr. HALDANE.—An appeal from the administrative or executive authority, but not an appeal from the legislative authority.

The Lord CHANCELLOR.—The Act of the legislature, and the Act of the judicial authority are put on the same footing exactly.

Mr. HALDANE.—There is no difficulty in reading the section as I put it, because I am merely asking your lordships to read it so as to leave intact what I have called for short, the code contained in subsection 1 as to rights and privileges at any time, but rights and privileges only so long as they exist. It does not take away the right of a paramount and exclusive authority to alter those rights and privileges.

The Lord CHANCELLOR.—That is a very feeble protection. As long as the legislature has left them you can appeal against an administration which contravenes the intention of the legislature, but the legislature may sweep them altogether away, and against that you have no protection at all. That is a very imperfect protection.

Mr. HALDANE.—My answer to that is that when responsible government and when representative government were given, as they were by these Acts, to the province of Manitoba, it was intended to enable the majority to prevail, subject to such limitation as in this Act is introduced. If you were going to introduce such restrictions as would confer the whole jurisdiction over its educational laws on another authority, surely it would have been natural to say so. It is a very substantial if not a very strong protection on the one hand. I do not think it is very strong, and I doubt whether it was meant to be, and anything else would certainly be a most unusual and extraordinary way of dealing with the matter.

The Lord CHANCELLOR.—Is it so extraordinary when you remember that this was an arrangement made as one of the terms on which the union was to be effected? It would be shutting one's eyes to the most obvious facts which were exhibited on the face of the British North America Act itself, if one were not to see that one of the obstacles to this federation scheme was the fear of educational legislation in the separate or distinct provinces which might affect the position of those who desired a denominational education. That runs through all the provisions of section 93, and it appears to me to be on the face of section 22 also. Therefore it is not extraordinary in that case to find limitations and safeguards and superior legislative power given to the Dominion Parliament, which represents the country as a whole. It does not strike me as extraordinary.

Mr. HALDANE.—The general proposition, I agree, is not so anomalous, but it is the way that it is carried out. That is if it was meant to be done, my submission is, it would have been done in some specific form.

The Lord CHANCELLOR.—Is it carried out in such an anomalous way? What it does is this. It gives the ultimate remedy in this form by legislation by the Dominion Parliament, which otherwise has no power to legislate on any such matter in the province. That is the ultimate remedy. It interposes between the action of the Dominion Parliament and the provincial legislature, the Governor, and his consideration of the matter, and his decision, and therefore it is a check upon the interference by the Dominion Parliament in its legislative capacity with the province as regards education.

Lord MACNAGHTEN.—And the Dominion Parliament cannot interfere, I suppose, unless it is asked to do so, and they are not bound even then.

Mr. HALDANE.—You could not bind them. Nobody ever heard of binding a legislative body. If it had been intended to adopt a scheme of that kind I could have understood it, but that is not the scheme.

The Lord CHANCELLOR.—That is just the question. I thought you were saying that that could not be the construction of this section, because that would be such an extraordinary and anomalous scheme. It was to that my observation was directed. If it is not the scheme, there is an end of it.

Lord WATSON.—Were those provisions really a matter of arrangement between the Dominion Parliament and the province? The provisions of the British North America Act do not include Manitoba, but it was admitted on no other terms. It is section 146, "It shall be lawful for the Queen, by and with the advice," and so on, "on addresses from the houses of the Parliament of Canada, and from the houses of the respective legislatures of the colonies or provinces of Newfoundland and Prince Edward Island and British Columbia," which have all been admitted, and then on other addresses respecting Rupert's Land and the North-western Territory to admit, and so on, "all or each of them into the union on such terms and conditions in each case as are in the addresses expressed, and as the Queen thinks fit to approve, subject to the provisions of this Act." It is a voluntary arrangement made, and the parties to the arrangement are on the one hand the Dominion Parliament, and on the other hand the provinces seeking admission. This Act embodies the terms on which Manitoba was admitted.

Mr. HALDANE.—If we were dealing with a question that was peculiar to Manitoba there would be more force in your Lordship's observation than I venture to submit there is, but if you take what we are dealing with here in subsection 3 of the Manitoba Act and subsection 4 of section 93 of the British North America Act, which are the relevant sections for the purpose of giving an answer to the question the Lord Chancellor put, they are identical in both cases. They are meant to be of general application, and they are identical clauses, and if it were intended to carry out the general proposition to which the Lord Chancellor has referred they would have been framed differently.

Lord MACNAGHTEN.—I do not understand how you would have framed them differently. When you once see the object they are framed very well and are not unreasonable. They leave as much room for consideration and negotiation before the Governor General steps in and requests an Act of the Dominion Parliament *in invitum* of the provincial legislature as could be.

Mr. HALDANE.—What is it the Dominion Parliament comes in for?

Lord MACNAGHTEN.—As the last resort.



Mr. HALDANE.—To give effect to a decision of the Governor General on appeal.

Lord MACNAGHTEN.—Which has been set at naught by the provincial legislature.

Mr. HALDANE.—Be it so, but they do not come in for the purpose of giving the Dominion legislature seisin of the educational question.

The Lord CHANCELLOR.—They give them seisin of the educational question in so far as it is necessary to prevent what are called oppressions of the minority by making remedial laws.

Mr. HALDANE.—To the extent of making them a sheriffs' officer to enforce the Governor General's decision.

The Lord CHANCELLOR.—No, it is by legislation.

Mr. HALDANE.—I quite agree, but it was only by legislation that this could be enforced if it was the appropriate remedy. Look at it. "An appeal shall lie to the Governor General in Council from any Act or decision." That is the first thing. Then "in case any such provincial law as from time to time seems to the Governor General in Council requisite for the due execution of the provisions of this section is not made."

The Lord CHANCELLOR.—That I take it to be a provincial law which prevents the affection of a right or privilege of the Protestant or Roman Catholic minority in relation to education. That is the law he submits to them they ought to make. Then if they do not make it, such a law can be made by the Dominion Parliament.

Mr. HALDANE.—Is not that another way of providing an appeal on some law that has been passed by the provincial authority to prevent a right or privilege being affected, that cannot be affected till there has been provincial law.

The Lord CHANCELLOR.—No ; you might leave the provincial law existing and yet you might add to it an enactment that might prevent the rights of the minority being affected.

Mr. HALDANE.—My answer to that is, that it is "only in so far as the circumstances of each case may require." It is strictly limited—first there is what I have read and then, "or in case any decision of the Governor General in Council on any appeal under this section is not duly executed by the proper provincial authority in that behalf, then, and in every such case, and as far only as the circumstances of each case require, the Parliament of Canada may make remedial laws for the due execution of the provisions of this section and of any decision of the Governor General in Council under this section." It looks as if all that was intended was to give the Dominion Parliament, not general seisin of the educational question, but power to enforce the decision of the Governor General.

The Lord CHANCELLOR.—It is a little beyond that. It is the execution of this section. That depends on what the section was intended to give. If you are right that the section was intended to give no more than is given by subsection 1, that would be something less. If, on the other hand, it extends to privileges and rights beyond that, that would be something more ; but whatever it was intended to give, the provincial legislature is to be invited in the first place to pass such legislation as will protect all the rights intended to be protected, and if they will not do it, then it is left to the Dominion Parliament to devise any remedial law they please that will have that effect.

Lord SHAND.—Do I understand that you say there is an appeal both to the courts of law and from those courts to this board, and an appeal to the Governor General in Council at the same time with reference to any infringement of subsection 1 ?

Mr. HALDANE.—Yes.

Lord SHAND.—Supposing this board were of opinion and gave the opinion and the decision that the law did not prejudicially affect any rights or privileges with regard to the denominational schools, and the Governor General a different opinion, what then ?

Mr. HALDANE.—The Governor General would be bound by the opinion of this board. The Governor is only a servant of the Queen.

Lord SHAND.—Why so ?

Mr. HALDANE.—Because the Governor is ultimately only a servant of the Queen.

The Lord CHANCELLOR.—I do not know ; because it says such law as "seems to the Governor General in Council requisite." It has been generally held that does not

mean what *is*, but what *seems*. If it seems to him requisite, it comes within his functions, though, in point of fact, it may not be.

LORD WATSON.—The power given in those other cases, if it be given, appears to me to be unquestionably a power to be exercised in the discretion of the Governor. I cannot conceive, if he is made a court of appeal to determine whether it is *ultra vires* or no, that it is to be a matter depending on his discretion. It is a matter to be determined judicially, whoever determines it.

MR. HALDANE.—Why is it to be said it is a matter of discretion.

LORD WATSON.—The question is whether it complies with or sins against a positive enactment of the legislature.

MR. HALDANE.—There is not a word about discretion.

LORD WATSON.—I do not think if a question of that kind is raised for decision there can be anything of what I call discretion.

MR. HALDANE.—There is no question of discretion by the Governor General in these cases.

LORD WATSON.—It is all other cases than an appeal, and the words of subsection 3 still more strongly suggest it.

MR. HALDANE.—He is to be a tribunal of appeal in relation to provincial authorities, and if that covers judicial authorities it is not unnatural, because he appoints the provincial Lieutenant Governor and some of the judges.

LORD WATSON.—If he is a court of appeal at all in matters falling under subsection 1 that is making two concurrent courts of concurrent jurisdiction, and the general rule with regard to two courts of concurrent jurisdiction is that when the one is fairly seised of the case the jurisdiction of the other is ousted. I do not know of any concurrent jurisdiction which consists of two going on at the same time. That is quite novel to me. There may be such things, but I have never heard of them before. I have heard of concurrent jurisdiction very often.

MR. HALDANE.—The appeal here is to the sovereign. The supreme authority directing the Governor General is the sovereign. With regard to what the Lord Chancellor said about the expression “seems,” it cannot be that the Governor General could make a mistake and invite the Dominion Parliament to pass, and that they did pass some legislation that was grossly *ultra vires*, without its being subject to the jurisdiction of the Queen and the jurisdiction of your Lordships. Surely it would require much stronger words to do that.

THE LORD CHANCELLOR.—It means “as in the opinion of the Governor General in Council is requisite.” That is what it seems to me to be.

MR. HALDANE.—If the Governor General is to be in a position to enable the Dominion to go wrong, and go far over the line as it would be with regard to educational matters in legislating, surely there must be some way of challenging that? It is not to be assumed there is not in the absence of some words taking it away. I do submit it is a possible construction of these sections and a consistent construction of them to say there was to be some judicial authority which might be more trusted and more apt for the protection of the minority, whether Protestant or Catholic for the time being, than the mere ordinary tribunals of the land. It seems to me to be quite natural it should be so, and if that is once established, then you get it quite plain and distinct what the construction of the section must be. As regards subsection 2 all questions of control over provincial authorities, taking the expression in the widest sense, and it might well be all questions directing the repeal of acts which were not within the competence of the provincial legislature by reason of their being *ultra vires* under section 1, but which might be decided by some judicial authority to be *ultra vires*, would come within the competence of the Dominion Parliament on the initiation of the Governor General, but the functions of the Dominion Parliament would be confined, and strictly confined as they are, I submit by subsections 4 and 3 under both acts, to giving effect to the decisions which the Governor General had come to—not to the exercise of his discretion, but to his position as an authority, who is made supreme.

Now, my Lord, there is very little which I wish to say further about that section. My learned friend, Mr. Blake, referred to various matters, and amongst others the ques-

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tion of the veto of the crown. Why was it necessary, if these matters were legislative as distinguished from judicial, to deal with them at all upon this view if it had been intended to bring in the larger legislative authority and the power of the Dominion Parliament? But for the mere purpose of annulling an Act, if it was intended to give a discretionary power to the Governor General, the answer is he had got it; because at any time within two years after assent given by the Lieutenant Governor to the Act he might under section 90 disallow it.

The Lord CHANCELLOR.—He disallows it as a whole, and could not disallow a section.

Mr. HALDANE.—That is so.

The Lord CHANCELLOR.—It might be a very subordinate point, and yet it might be very objectionable to defer the beneficial legislation.

Lord WATSON.—And it might be very desirable in the public interest that the Act should be retained, but yet certain provisions ought to come out and clauses be introduced for the protection of the minority. He could not effect that legislatively but for the enactment of this statute.

Mr. HALDANE.—But it would be a powerful instrument in his hand for the purpose of putting pressure to attain the object.

The Lord CHANCELLOR.—Still you would not dispute this—if these provisions are stipulated for the protection of those who have particular views with regard to education, they might well have stipulated for such an appeal to the Governor, even though he had the power of disallowing the Act.

Mr. HALDANE.—It might have been so.

Lord WATSON.—He would not otherwise have the power to decide what ought to be done and to have it legislatively enacted, though the provincial legislature refused to be a party to the Act.

Mr. HALDANE.—All I say is if it is so it is a circumstance to be taken into account in construing this section that the matter was not one which, having regard to the limitations of subsection 1, was wholly within the power of the province.

Now, my Lords, if the other construction is taken there is rather a curious state of things, because in 1871, immediately after this Act got Imperial validity, it was unquestionably possible for the provincial legislature to have passed the Act of 1890, and no question could have been raised about it. Then comes the consequence, if the construction contended for by my learned friends is right, that what the legislature had power to do, and what in ordinary circumstances they would have the power to undo, or alter, or vary at their pleasure, as the necessities of the changing condition of the persons entrusted to their jurisdiction demanded, they are deprived of having power to do by their own Act. I do not say it is not a possible conclusion to come to, but it is not a very usual one.

Lord MACNAGHTEN.—I suppose you must bear in mind the situation of the parties and the population at the time. I suppose an Act like that of 1890 could not have been passed, and I suppose it was necessary to pass some Acts with reference to education at that time.

Mr. HALDANE.—There might have been Acts of a different kind in New Brunswick and Nova Scotia. The Acts passed have been purely undenominational.

The Lord CHANCELLOR.—In the very next year after the admission of Manitoba to the union, there was a law passed. They began at the outset by passing a law relating to denominational education, and one knows that it was an arrangement between Protestants and Roman Catholics. Each of these classes must have been consulted before you could arrive at an agreement in favour of the union, if they were coming into the union. Is it an unfair inference that at that time both parties understood one another, and that denominational education with protection to the other party would be provided in Manitoba? We find they did so legislate the next year; and if that be the case, may not that explain their not having made any demand which would have prevented such an Act being passed, because it was a matter they had reason to know was not within their contemplation at all? Is it not shown that that is not a mere speculation, but probably well grounded, by the fact that they did in the next year pass this denominational system?

Lord WATSON.—I do not think it is at all surprising in the circumstances that such should be the outcome of the union.

Lord SHAND.—The point you are making now, as I understand, is that it is a remarkable thing they should not be able to repeal a statute that they themselves had passed.

The Lord CHANCELLOR.—That if they had passed this statute at once before they passed any denominational education at all it would not have affected any right.

Lord WATSON.—May not it be suggested—I know nothing about it—if it is open to speculate about it that you could not have passed any statute going this length? If the non-sectarian portion of the community were of that strength in 1871, why did they pass an Act the very reverse of the Act they wished to have? Why did they pass a denominational statute when they were all for non-sectarianism—assuming they were so at that time? If they were not all for non-sectarianism I do not see how they could have passed it.

Mr. HALDANE.—This Act gave non-denominational education to all.

Lord WATSON.—I think a change has come over the spirit.

The Lord CHANCELLOR.—What you are entitled to look at is the condition of the population, this being a parliamentary bargain, and the condition of the parties at the time, when you are dealing with an Act which speaks of majorities and minorities. I do not know which had the superiority, but at all events they were pretty evenly balanced.

Mr. HALDANE.—All I am saying is that if it had been intended to impose the restriction on the power of the Manitoba legislature which has now been contended for by the appellants, that restriction ought to have been put in some different language to what it is here. It might well be said that any right and privilege once constituted by legislation was not to be taken away or repealed without the consent of the Governor General. It is such an unusual thing to put in, that I do submit that if it was intended to insert it there, it would have been put in some language that was plain, and not in language which, to say the least of it, is ambiguous.

[Adjourned for a short time.]

Mr. HALDANE.—My Lords, I have said all that I feel justified in saying on the first point. I will simply sum up my propositions—that subsection 1 exhaustively defines the powers and the limitations of the provincial legislature—that subsection 2 is a subsection in general language which ought to be construed, as all subsections in general language in Acts of a similar kind would be construed, consistently with subsection 1—that the position of the Governor General is that of a person having a power of determining on appeal questions of law, and not a person vested with an administrative discretion—that to hold otherwise would be to put him at the mercy of any judgment of any tribunal which might or might not be appealed from to this board before the Supreme Court of Canada was constituted—that he must be put in a position to deliberate and decide upon questions of *ultra vires*—and that being so, he is not a person vested with a discretion, he is a person who has to exercise a judicial authority which is the condition precedent of the Dominion Parliament coming in and giving effect to his decision whatever it may be. That is my submission to your Lordship as to the proper construction of section 22 of the Manitoba Act.

But now, assuming against myself for the sake of argument, that on the proper construction of this section, the rights and privileges so far as they are legislative, are not rights and privileges for the time being, as I contend they are, but are rights and privileges which have once been established by the Manitoba legislature, and which cannot on the hypothesis in question be abolished by the legislature; I still contend before your Lordships that the conditions which alone enable an appeal to the Governor General have not arisen, and that that is a question which your Lordships in the exercise of the duty which you have taken upon yourselves of advising the Governor General are bound to answer. My Lords, as formulated by the Governor General the question which he addresses to your Lordships is, whether the Act of 1890 constitute

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such an infringement and affection of the rights and privileges conferred by the preceding Acts as to give ground for his interference under section 22. Now, my Lords, upon that it is important to observe—I shall not have occasion to trouble your Lordships with a detailed argument upon it—but it is important to observe what the provisions of the previous statutes really are in order to see whether they constitute a right or privilege of the minority, and as I submit to your Lordships, of the minority as such. It is not enough, for instance, that there is a right to rate for education because that would be a right which was given to the community as a whole. The question is whether there is a right or privilege given to the minority as such, and what I suggest to your Lordships as the true interpretation of the rights and privileges conferred by these previous statutes is that they are rights and privileges of exemption from liability which is created by these statutes upon the whole community; that, in other words, there is a system which is passed for the whole community, and that dependent upon that system there is a right or privilege of exemption which has meaning, validity and effect so long, and so long only, as the system continues in effect. The system may be taken away, if the argument is well founded, because the system in itself was not an infringement of a right or privilege, but if the system disappears then the ground for the exemption disappears, and accordingly if the legislature abolishes the system no question arises as to the right or privilege which had only this contingent and conditional existence.

LORD WATSON.—The right given to the whole community by a statute of this year you say does not confer any right or privilege when it is taken away by an Act next year—it does not give any right or privilege to those who under next year's statute become a dissentient minority. Is that the proposition?

MR. HALDANE.—Yes, but I should like to state it a little more fully.

THE LORD CHANCELLOR.—Your point is that those statutes between 1871 and 1890 do not give any right or privilege at all to the minority in relation to education?

MR. HALDANE.—That is it. They do give what I have called contingent and conditional rights and privileges of exemption from the system which had been established.

LORD WATSON.—The privilege was to be given in the shape of exemption from the general rule as to education.

MR. HALDANE.—Yes.

THE LORD CHANCELLOR.—But had not they power to tax in the first place; and in the next place to tax all with the exception of those who were contributing to some other schools not of their faith for the support of the schools?

MR. HALDANE.—They had power to tax, and they did tax, but the contributions of those of a particular faith were allowed to go under that system to the support of their particular schools.

THE LORD CHANCELLOR.—Is not the power to tax for the support of schools where that kind of education is given which is in accordance with the view of the minority, a right or privilege of the minority?

MR. HALDANE.—One must look at the statute to see what it is. It is really a power or right to claim exemption from a tax which is levied on the whole community for a system of education for the benefit, not of a minority, but of the whole.

THE LORD CHANCELLOR.—There was a division in the first instance, into separate districts—Catholic districts and Protestant districts—although there was some overlapping, and the people who managed the education in the Catholic districts would be Catholics.

MR. HALDANE.—Not exactly so. In the first place there was a general board of education which managed the whole, but certain subjects were taken out of the jurisdiction of that board and transferred to particular sections of that board, and I say that was an exemption; but if you take away the board which had control of the whole, I say the exemption is taken away. That is the way I put it.

LORD MACNAGHTEN.—Before 1890 had not the Roman Catholics schools of their own which were appropriated for the purpose of the Public Schools Act?

MR. HALDANE.—There were unorganized schools. They were not appropriated.

Lord MACNAGHTEN.—Appropriation is proposed by the Act of 1890.

Mr. HALDANE.—Only by paying for them.

Mr. BLAKE.—No.

Mr. HALDANE.—I know what my friend has in his mind, and I have a distinct recollection of the question which the Lord Chancellor put. The Lord Chancellor said that it might be that at all events as to those schools which have been built out of rates which are contributed by the Roman Catholics, those have been taken. That is true, but my answer is that those never belonged to the Roman Catholics. It is quite true they were built out of rates that were levied on the community, except that what the Roman Catholics contributed for the building of those schools to those rates was applied to the building of Catholic schools, but they were not schools belonging to the Catholics. It was only that the rates which were a liability on the whole community, were in this case used for the building of Roman Catholic schools.

Mr. BLAKE.—No.

Mr. HALDANE.—I will go into that. My friend, I gather, dissents from that.

Mr. BLAKE.—I dissent entirely that the rates are levied on the whole community.

Mr. HALDANE.—I will go into that. The first thing I wish to ask your Lordships to bear in mind is the definition of the kind of interference which your lordships laid down on the last occasion. It is only one sentence of the judgment at page 157 :

“ But then it is said that it is impossible for Roman Catholics, or for members of the Church of England (if their views are correctly represented by the Bishop of Rupert's Land, who has given evidence in Logan's case), to send their children to public schools where the education is not superintended and directed by the authorities of their church, and that, therefore, Roman Catholics and members of the Church of England who are taxed for public schools, and at the same time feel themselves compelled to support their own schools, are in a less favourable position than those who can take advantage of the free education provided by the Act of 1890. That may be so. But what right or privilege is violated or prejudicially affected by the law? It is not the law that is in fault; it is owing to religious convictions, which everybody must respect, and to the teaching of their church, that Roman Catholics and members of the Church of England find themselves unable to partake of advantages which the law offers to all alike. Their Lordships are sensible of the weight which must attach to the unanimous decision of the Supreme Court. They have anxiously considered the able and elaborate judgments by which that decision has been supported. But they are unable to agree with the opinion which the learned judges of the Supreme Court have expressed as to the rights and privileges of Roman Catholics in Manitoba at the time of union. They doubt whether it is permissible to refer to the course of legislation between 1871 and 1890, as a means of throwing light on the previous practice or on the construction of the saving clause in the Manitoba Act. They cannot assent to the view, which seems to be indicated by one of the members of the Supreme Court, that public schools under the Act of 1890 are in reality Protestant schools. The legislature has declared in so many words that the public schools shall be entirely unsectarian, and that principle is carried out throughout the Act. With the policy of the Act of 1890 their Lordships are not concerned. But they cannot help observing that, if the views of the respondents were to prevail, it would be extremely difficult for the provincial legislature, which has been entrusted with the exclusive power of making laws relating to education, to provide for the educational wants of the more sparsely inhabited districts of a country almost as large as Great Britain, and that the powers of the legislature, which on the face of the Act appear so large, would be limited to the useful but somewhat humble office of making regulations for the sanitary conditions of school-houses, imposing rates for the support of denominational schools, enforcing the compulsory attendance of scholars, and matters of that sort.”

Now, my Lords, that I start from. The Act of 1890, but for what may or may not be the effect of these immediate interpositions by the legislature between 1871 and 1890, is an Act which is unobjectionable. It infringes no right or privilege which existed at the union. It does not establish a denominational school system.

Lord SHAND.—That shuts you up to the question of what is the effect of those intermediate Acts.

## Manitoba School Case.

Mr. HALDANE.—It does.

Lord SHAND.—There is one Act which embraces the whole of the previous Acts together—the Act of 1881.

Mr. HALDANE.—Yes; really nothing turns on anything except the Act of 1881, which, as your Lordship knows, repeals the Act of 1871. Now, just let us turn for moment to that. First of all I should like to look at the Act of 1871 for a moment because it contains terms and expressions which recur again in the Act of 1881.

Lord SHAND.—Shall we not get them in the Act of 1881?

Mr. HALDANE.—I think it is desirable to glance at the Act of 1871.

The Lord CHANCELLOR.—Where is it to be found?

Mr. HALDANE.—I have it in a separately printed book at page 21. The Act of 1871 which is now repealed, but which is the foundation of the code of legislation contained in the Acts which began in 1881, "The Manitoba School Act," and the amending Acts, first of all begins by establishing a board of education which is to consist of not less than 10 or more than 14 persons, half are to be Protestants and the other half are to be Catholics. Then one of the Protestant members is to be superintendent, and one of the Catholic members is to be superintendent of the schools of their respective denominations. Then the next important provision is the provision of a chairman. The duty of the board is first of all (and this is the board as a whole) to make regulations as they think fit for the general organization of the common schools, then to select books and so on, but not dealing with religion or morals. Then there is a subdivision of school districts, and then we come to section 10, which I say does confer rights and privileges upon the minority in what is really the shape of exemptions from the general provisions of the Act. Each section of the board as a whole (the board as a whole being for the general regulation) is to select teachers; this is a denominational system, and the selecting of the teachers is very important. It is to prescribe the books; this is a denominational system where religious books may be used, and it is very important that the Catholics should have the selection of their own books.

The Lord CHANCELLOR.—Why do you say it is an exemption? It is an express provision. It is an enabling or an empowering provision. It is not an exemption from anything. Each half gets exactly the same thing. It is not a thing that the whole gets from which any portion is exempted, but the same thing is given to two halves. Of which is it an exemption?

Mr. HALDANE.—The system of denominational education is given to the board as a whole, the selection of the books and the selection of the teachers is given to the various sections.

The Lord CHANCELLOR.—But that is not an exemption from anything.

Mr. HALDANE.—No, but what the right or privilege of the minority is—

Lord WATSON.—Your convention is that the right or privilege must be conferred in the form of an exemption.

Mr. HALDANE.—Yes, I say it comes to that.

Lord WATSON.—But that anything given in the form of a right or privilege common at the time it is given to the whole of the community of Manitoba, is not a right or privilege such as is contemplated in the 3rd subsection.

Mr. HALDANE.—That is my proposition.

Lord WATSON.—Unquestionably it does not seem to admit of doubt that before 1871 there was no denominational teaching, and there were no privileges or rights whatever until the union. There were none before the union, or at the union, but immediately after the union, from 1871 and downwards to the Act of 1890, there was repeated legislation, and during the whole of that time the legislation made state education denominational.

Mr. HALDANE.—Yes, that is so.

Lord WATSON.—I think it hardly admits of doubt that the privilege which was conferred was not an exceptional privilege. It was given all round.

Mr. HALDANE.—It was given all round. That is my proposition, that the system of denominational education—

LORD WATSON.—Each denomination had a state-aided school, in which a particular religion was taught.

MR. HALDANE.—Yes. I do not know that it matters, but I prefer to put it in a different way.

LORD WATSON.—I do not object to your putting it in another way.

THE LORD CHANCELLOR.—Can you tell me, as a matter of fact, when the Manitoba legislature came into existence? The Manitoba Act is the 12th May, 1870, but I suppose they would have to have a Lieutenant Governor appointed, and to have an assembly elected.

MR. HALDANE.—I cannot tell your Lordship from information, but your Lordship notices the Act of 1871, and therefore I think I am right in saying 1871.

THE LORD CHANCELLOR.—They existed, I know, because they existed in time to pass the Act by June, 1871. What I wanted to know was how early in their existence that Act came upon the carpet.

LORD SHAND.—Which Act is that, the Act of 1870?

THE LORD CHANCELLOR.—The Act of 1871.

MR. HALDANE.—That I cannot say, my Lord. I do not know whether my friend can inform your Lordships.

MR. BLAKE.—The 15th of July, 1870, as my friend informs me, is the period at which the union came into force, but neither of us are aware when the legislature was first convened.

THE LORD CHANCELLOR.—Of course that must have taken some time.

MR. BLAKE.—Yes.

THE LORD CHANCELLOR.—Because, of course, you had to elect the legislature?

MR. BLAKE.—Certainly. I am not aware whether there was one elected in the fall of that year or not.

MR. HALDANE.—There was the Imperial Act in June, 1871.

MR. BLAKE.—My learned friend tells me that this was the first session; the session in which this Act was passed was the first session of the legislature. That is what my friend tells me.

LORD SHAND.—This Act of 33 Victoria, cap. 3, which is in the copy I have before me, was assented to on the 12th May, 1870.

THE LORD CHANCELLOR.—Yes, but I want to know when the legislature came into being.

MR. BLAKE.—All that we know is that this Act in question was passed in the first session of that legislature. My learned friend so tells me.

MR. HALDANE.—The existence of the province as a province was not finally set at rest until the 29th of June, 1871, which was the date when the Imperial Act forming Manitoba received the royal assent.

THE LORD CHANCELLOR.—But there was no doubt a legislature elected before.

MR. HALDANE.—No doubt there was a legislature elected before. It must have been so.

LORD SHAND.—Was not the establishment of a system of denominational education a privilege of the minority?

MR. HALDANE.—No, my Lord. It was given to the community as a whole.

LORD SHAND.—No doubt, but still they got that notwithstanding, whatever might be the vote of the majority.

MR. HALDANE.—What the legislature did was this, they said "it is in the interests of the whole that the community as a whole should have denominational education."

LORD SHAND.—If you assume a very small minority of one class it is a great privilege to them to have that.

MR. HALDANE.—Even though it has certain rights and privileges, which I say—

LORD SHAND.—But for that privilege they would have been out voted. The schools might have been made all Protestant, for example, if the minority was Catholic.

MR. HALDANE.—That is possible.

LORD MACNAGHTEN.—Supposing it was a privilege conferred on all, but one of the large sects did not consider it a privilege, is not it a privilege to the minority?



## Manitoba School Case.

Mr. HALDANE.—It is so difficult to answer these thing in abstract terms.

Lord SHAND.—But it is the very question which is raised—whether you are not in fact giving a privilege to a minority.

Mr. HALDANE.—I will put a case, my Lord. Supposing there was an Act which said—

Lord WATSON.—Surely a privilege may be a privilege without being appreciated as such.

Lord MACNAGHTEN.—It is not a privilege to a man who does not consider it a privilege, but it is a privilege to a man who does consider it a privilege.

Mr. HALDANE.—I think, my Lord, something more than that is involved. Suppose that the state says “we are going to rate for education.” Well, one section of the electorate, or one section of the population may consider that a privilege.

Lord MACNAGHTEN.—You say that there is no privilege in one man being obliged to put his hand into his pocket to support his particular school.

Mr. HALDANE.—The other man never putting his hand into his pocket at all. My submission is that that was not a right or privilege conferred upon the minority which was contemplated by the Act. I agree that what was meant was to protect the minority against the legislative majority—

Lord WATSON.—They came to require the protection, it appears to me, being in the minority.

Mr. HALDANE.—Yes, being in the minority.

Lord WATSON.—I do not see how that bears on the question. Surely it is a privilege to have denominational schools established if you are denominational. I can no more understand that than this: That if a nobleman or merchant prince admits the whole of the public to his domain for one day in the week, that is not a privilege, but if he keeps out the public and lets in half a dozen of them, that is a privilege.

Mr. HALDANE.—Yes, something that is given to them exclusively as a class is a privilege, and the class we want in this case is the minority.

Lord WATSON.—Privilege is very often used as a mere exceptional privilege, but that is not the meaning.

Mr. HALDANE.—It is not every kind of privilege. It is the privilege of the minority.

Lord WATSON.—I quite concede that.

Mr. HALDANE.—All that I am submitting to your Lordships is that, to take Lord Macnaghten's case, if we were dealing with the question of whether it was a right or privilege of the minority to have rates levied upon the community as a whole for the purposes of education, however great a privilege the persons who were Catholics and in the minority and were going to be overruled by the majority might consider that, that would not be a right or privilege of the minority within the meaning of subsection 2 of this Act. That is my proposition.

The Lord CHANCELLOR.—Certainly, if we are to allow the 1867 Act to throw any light upon it. If you look at the first subsection of section 93, it can hardly be doubted that there the rights and privileges intended to be protected were the rights and privileges of having either separate schools or denominational schools, as distinguished from a general system which was not in accordance with their views.

Mr. HALDANE.—Your Lordship refers to that system of separate schools?

The Lord CHANCELLOR.—Yes.

Mr. HALDANE.—That is in sub-section 3.

The Lord CHANCELLOR.—No, I mean if you look at subsection 1. You are looking at subsections 1, 2 and 3 together. If you look at subsection 1 you can hardly dispute that as regards Quebec and Ontario, one of the objects, at all events of subsection 1, was to preserve their rights to the then existing system of denominational education.

Mr. HALDANE.—Certainly, because those were rights they had by law.

The Lord CHANCELLOR.—Yes, they were rights they had by law, but what was the nature of the right? It was only the right to get assistance from the state funds for their separate schools as distinguished from the schools in consonance with the views of the majority: Protestants in the one case and Catholics in the other.

Mr. HALDANE.—There was a system then which the Catholics as a whole in Quebec claimed the benefit of.

The Lord CHANCELLOR.—The Catholics who were in the majority.

Mr. HALDANE.—Who were in the majority.

The Lord CHANCELLOR.—But the Protestant minority had what were called dissentient schools?

Mr. HALDANE.—Yes.

The Lord CHANCELLOR.—What was intended was to preserve the rights of the minority amongst other things, certainly.

Mr. HALDANE.—Yes.

The Lord CHANCELLOR.—What was the right of that minority except this? It was not merely that they might send their children to dissentient schools, but that the schools specially in accord with the views of the minority should receive state assistance and be part of the general system of education.

Mr. HALDANE.—That was a right which a class of persons had by law at that time.

The Lord CHANCELLOR.—Yes, but I am pressing upon you your own argument. According to you subsection 2, which speaks of affecting the rights of the minority, refers to rights given by subsection 1. Therefore I am pressing upon you that according to your construction of subsection 2 the right of a minority to have denominational schools supported at the state expense, and being part of the school system of the province, was a right affecting education in relation to the minority within subsection 2.

Mr. HALDANE.—I did not limit it to the rights conferred by subsection 1, because then I should have struck on the rock which your Lordship points out.

Lord WATSON.—I cannot help thinking that it was intended by that clause to give to a certain class of the community when they were in the position of being in a minority, the right of defending the privilege which they had conferred upon themselves when they were in the majority.

Mr. HALDANE.—Which they had conferred on themselves?

Lord WATSON.—Yes.

Mr. HALDANE.—Yes, that is so, my Lord.

Lord WATSON.—It was not a privilege to all, because I suppose some might be at one time and for a considerable period the minority, and then might become the majority.

Mr. HALDANE.—I do not want to take an illustration as being exhaustive of all the individual cases which might come within the category, but take the case I put. There is a system of denominational education under which the Catholics may have their own teachers and rule themselves—that is to say, apply their own rates to the provision of their own teachers and their own books. That is a very valuable right or privilege which they have got, and which they conferred upon themselves while there was a system of denominational education.

Lord WATSON.—What occurs to me is this, that where a privilege is conferred upon themselves by the legislative majority, that privilege must devolve upon the original majority, as the minority before there can be legislation contrary to their interests. At the time that Act was passed, and on the eve of passing it, the persons who enjoyed the denominational schools and regarded them as a privilege were in the minority.

Mr. HALDANE.—Yes.

Lord WATSON.—That was the condition at the time the Act was passed. No doubt it may have been due to their own actions whilst they constituted a majority in the balance of the political power of the state. That may be quite so. At the time when the original minority having become the majority proceeded to legislate, the condition was that the original majority were the minority.

Mr. HALDANE.—That only carries you so far.

Lord WATSON.—It does.

Mr. HALDANE.—It does not carry you the whole length.

Lord SHAND.—The legislation, you say, provided equally for all—is not that the point?

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Mr. HALDANE.—Yes, my Lord.

Lord SHAND.—Very well, assume that, but in providing equally for all thereby resulted from that mode of legislation privileges or rights in the minority, and you deprive it of that—surely that is a benefit?

Mr. HALDANE.—A special privilege.

Lord SHAND.—It resulted in a benefit.

Lord WATSON.—It put them all on the same footing. The non-sectarian education party did not regard it as a right or privilege. They regarded it as an infliction to be got rid of by statute.

Mr. HALDANE.—They did, and they had their remedy because they were not bound to send their children to schools in the district in which they lived; they might send them to any other schools.

Lord WATSON.—We cannot go into the considerations which entered into their minds.

Mr. HALDANE.—I am suggesting that there is a contrast between the words of subsection 2 and the words of the section to which the Lord Chancellor has referred, under which there is a preserving of the privileges conferred by law or custom on any class. In subsection 2 it is an act or decision.

Lord WATSON.—At the time when this new legislation of 1890 was passed the persons who valued denominational education were the minority. They regarded it as a privilege, and they held to it as a privilege, whilst others were seeking to upset it. Nobody else got a privilege. It was a privilege which they had at that date. It resulted to them from their own Act in the former time whilst they were the majority. Does that make any difference? That is the short point. You must look to the origin of it. You never could have a privilege created in that view of it by intermediate legislation, because that legislation must be the act presumably of the majority.

Mr. HALDANE.—You must see what subsection 2 means. Obviously it points to something different from what is in subsection 1.

Lord WATSON.—You must look at the two, because that would rather turn into ridicule subsection 3 of section 93.

Mr. HALDANE.—Subsection 3 of section 93 seems to point to something different. It seems to limit the right of appeal to the case where there is actually existing a system of separate or dissentient schools which no doubt might be oppressed by the act of the majority, and might have their rights and privileges interfered with, and in those cases, and in those cases only, they are to have a right of appeal. But going back to subsection 2 as it is in section 22, it is clear that something specific is meant by "right or privilege of the minority," and I read and I submit that the meaning of it is, that there is not to be anything done which can affect the position of a minority—a minority in legislation who are at the mercy of the majority. Nothing is to be done which can affect any right or privilege which they had in relation to education. Now, what right or privilege did these people have? Standing by itself, it is clear that the Act of 1890 is no infringement of their rights and privileges. Standing by itself, I say—that your Lordships have decided in Barrett's case. That is clear ground to start with.

Lord SHAND.—I do not understand that. Standing by itself compared with the state of matters at the time of the union, there is no privilege; but standing by itself in comparison with the state of affairs afterwards, there is a privilege.

Mr. HALDANE.—I have not made myself clear. I meant standing apart from any other legislation.

Lord SHAND.—Nobody had any privilege before, of course.

Mr. HALDANE.—Unless there had been some statutory privilege conferred, it must have been so.

Lord WATSON.—Having no intermediate statutes there could not be any privilege. I do not know whether the words "or practice" may have raised any privilege. I do not know, but I think presumably that would not arise.

Mr. HALDANE.—The simple question is whether there is a right or privilege which has been conferred on persons who have become the minority under any intermediate statute. Now, my submission to your Lordships is that such rights and privileges as the minority have within the meaning of the section—

LORD WATSON.—You cannot refer that phrase “the Protestant or Roman Catholic minority” to some temporary proportion which is a fluctuating one. Does not it mean the minority at the date when the Act that is said to infringe on their privilege becomes law?

MR. HALDANE.—I think it may be that. I am content to take it so.

LORD WATSON.—I think you must fix some period, otherwise they may have been the minority half a dozen times, and the majority time and time about.

MR. HALDANE.—But still it is a right or privilege which they are to have in their capacity of a minority. I mean to go back to Lord Macnaghten's illustration. It cannot be that the Roman Catholics, who had to pay rates equally with everybody else to support an undenominational system, could say, “Oh, we have a right or privilege. We object to this undenominational system being swept away, and we have a right or privilege to have education organized by the payment of rates.” That will not do. If that will not do, then you have to say into which category the statute you are construing falls—whether it falls into the category of a statute of that kind which confers rights and privileges on the community as a whole, or whether it falls into the category of a statute which confers rights and privileges upon some sort or class who may *quâ* class become the minority afterwards. My submission to your Lordships is that these intermediate statutes are of a kind which created rights and privileges of the first order, which came upon the community as a whole. It is not necessary for me to go into the details of them. I only point out to your Lordships this, that starting with the Act of 1871, which is a good illustration of what happened later, the control of education was given to a common board, and it was only when you came to what you may call the minority rights, when you came to the question of the provision of religious books, and the selection of teachers, that Catholics *quâ* Catholics or Protestants *quâ* Protestants, had any recognition at all. For the rest, the teaching was indifferent on the general board. There might have been Mahomedans or Unitarians or members of any sect. There is no religious qualification, and for that reason I say, that while you have a denominational system there within the meaning of subsection 2, the rights and privileges conferred were conferred on the community as a whole, and never did become the rights and privileges of any class who could assume the position of a minority. Now, when you pass to the Manitoba School Act of 1881, which contains a code, you have some things which illustrate what happened very strikingly. In the first place the Act re-constitutes the board, making its members 21, and giving a majority to the Protestants. Nobody complained of that. Of course it may be observed that they did not think it worth appealing against; but at any rate they did not appeal against it, and they apparently construed that alteration not as one which affected the rights and privileges of a minority.

THE LORD CHANCELLOR.—Supposing they had passed an Act saying that no Roman Catholic should be eligible to be on the board, what would you have said then? It did not interfere with any right or privilege they had at the time of the union, because no such board existed. The board was only, as you say, a creation of the legislation.

MR. HALDANE.—I will give your Lordship my answer. It would have been open to the legislature of Manitoba to sweep away the whole system.

THE LORD CHANCELLOR.—But still before we come to that there is the prior question, would there have been any appeal to the Governor General in Council?

MR. HALDANE.—Is your Lordship speaking of a statute which was passed for the first time or an amending statute? Because if it is a statute passed for the first time—

THE LORD CHANCELLOR.—The first time they provided for equal numbers, because at that time they were about equal, and I suppose it may have been considered that they could protect themselves, but one or the other grew—I am supposing the Protestants to grow, as was the case—and supposing instead of merely increasing the number of Protestant representatives they had excluded all Roman Catholics. That, of course, would have been *intra vires*.

MR. HALDANE.—Yes.

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The Lord CHANCELLOR.—Would they have been without redress in such a case?

Mr. HALDANE.—I do not see how they could have had redress.

The Lord CHANCELLOR.—Your objection must go that length.

Mr. HALDANE.—Yes, I do not think they could, and apparently so they thought, because although they did not exclude Roman Catholics, they put them in a minority.

The Lord CHANCELLOR.—But the general board still had powers which they might have been quite content to leave to a board of Protestants alone. You say the sections had less power.

Mr. BLAKE.—The board's powers were reduced; the section powers were increased.

Mr. HALDANE.—I do not think they were. My friend suggested something of that sort in the course of the argument, but on looking at the schedule what I found was this, that while the board might regulate the general organisation of common schools, and so on, the section was to have under its control the management of the schools, and the section is to arrange for the examination of the teaching and the selection of the books and maps and so on. There is that difference, and then there was given a reference to religion and morals. It is quite true that the board on that occasion did not have the selection of what I may call the non-sectarian books. There was that difference, but the argument must go to this, that that Act was *ultra vires* and would have been *ultra vires* if it had gone further.

The Lord CHANCELLOR.—And not only that, but that there was to be no appeal.

Mr. HALDANE.—That it was within the uncontrolled competence of the provincial legislation. Well, my Lords, the Act of 1881 went a very long way, because it established compulsory education. It did not merely establish free education. It established rate aided education, it established education which was aided by grants, and it established a provision for compulsory education. The whole of that machinery was swept away by the Act of 1890, and under the Act of 1890 what was substituted was a system which was purely undenominational, as your Lordships have held, which was not compulsory, and which consists of free education out of the rates and grants out of the funds of the province of Manitoba. I say that, standing by itself, was within the competence of the provincial legislature, and I say that there was nothing that interfered with the provincial legislature passing it by reason of the legislation which had taken place intermediately, because that legislation was legislation, as I venture to submit on its construction, in the interests of the community as a whole, and because the rights and privileges which a class of persons who afterwards became a minority had, were rights and privileges which were in the nature of privileges or rights relatively only to the existence of the general system, and the system not being a system which was given in the interests of any class or section of the community which had come to be the possession of any minority *quâ* minority, was a system which could competently be swept away.

My Lords, that seems to me to exhaust all that is to be said upon the subject of this second point which I have spoken of. If your Lordships should take any other view it comes to this, that there is scarcely any educational system of a denominational character which the Manitoba legislature has set up that it could competently alter without interference at every turn.

Lord SHAND.—No, it must be something that may affect one body of religionists, Catholics or Protestants.

Mr. HALDANE.—If your Lordships were to take this very wide construction—

The Lord CHANCELLOR.—It would not be inconsistent with a system such as works in Ontario, where you have an undenominational system, as I understand, for the majority of Protestants coupled with a separate school system for the Catholics.

Mr. HALDANE.—My Lord, is that certainly so? Under this Act of 1881, amongst other things which happened, the grant from the taxes, not from the rates, which used before to be distributed evenly between the Catholics and Protestants, was distributed unevenly in proportion to the children. Well, the result of that, of course, is that the Catholics have to pay more in other ways in order to make up the *quantum* of money which was necessary for their education. There you have, if you will take what I will call the wider construction against which I am contending, an infringement of a right

or privilege of the Catholics. More money is going to the Protestants at the expense of the Catholics. Again, there are other illustrations of the same kind of thing. I could multiply them. Suppose there had been a threepenny rate established, and it had been increased to a fourpenny rate by reason of the different distribution of the grant, the rate in a Catholic district being bigger than it used to be by reason of less money coming from the state, the imposition of the fourpenny rate would be another illustration of interference with a right or privilege.

LORD MACNAGHTEN.—Although the Act may give a right of appeal to the Governor General in every case in which rights or privileges are affected, the Governor General surely must consider whether the complaint is a substantial complaint or not, must not he?

MR. HALDANE.—Does not that bring us back to what we were dealing with before? In the first place it is anomalous that a matter of that kind should be taken out of the competency of the legislature, a matter of the specific kind I am speaking of now, and handed over to the Governor General. In the second place, for whatever reason subsection 3 of the Manitoba Act and subsection 4 of the British North America Act are so drawn as to speak of the function of the Governor General to give a decision on an appeal on the question of whether a right or privilege of the minority is affected—

LORD MACNAGHTEN.—Do you mean to say that if there was a technical and unsubstantial interference with a privilege the Governor General would have to feel bound to have recourse to this extraordinary remedy?

MR. HALDANE.—I do not think it is any more technical or unsubstantial than the functions of your Lordships, who often have to declare that an Act is *ultra vires*. The Governor General would give his decision.

LORD MACNAGHTEN.—We are a judicial body, and he is not sitting as a judicial body.

MR. HALDANE.—There come in those considerations which I will not venture to repeat.

LORD MACNAGHTEN.—He is to take into consideration many things which we have not to.

THE LORD CHANCELLOR.—He cannot do anything himself. At the last resort the only person or body who can do anything more are the Parliament of Canada, who are certainly not under legal compulsion to act, and certainly would not act unless they conceived there was some substantial ground for it.

MR. HALDANE.—Certainly not; but he is the authority which by making pronouncements gives them power to make legislation.

LORD MACNAGHTEN.—He is the judge in the first instance. You do not suppose that he is to go to the Parliament of Canada and say “there is an infraction, please pass a law.” He would have power to say, “that is such a trumpery matter that I am not going to do anything.”

MR. HALDANE.—I suppose the maxim “*De minimis non curat lex*” applies to him as much as to anybody else. But I am putting it that *quid* this class of things his business is to declare his opinion.

THE LORD CHANCELLOR.—That would not seem “requisite for the due execution” if he thought that there had been an infringement, but that it was so unsubstantial that in substance they had all the rights which were intended to be preserved to them.

MR. HALDANE.—That would be a question for the Parliament of Canada.

THE LORD CHANCELLOR.—The words are “As seems to the Governor General in Council requisite for the due execution of the provisions of this section.” It would not seem to him requisite if he thought there was no substantial right interfered with.

MR. HALDANE.—That might be; but I am putting cases which might be more substantial, such as the question of the grant, and I press upon your Lordships that if you do construe the sections in this very wide sense, and unless you limit them in the direction which the respondents contend for at your Lordships’ Bar, the consequences are such as not lightly to be taken to have been in the contemplation of those who framed this Act, and that the provincial legislature would be hampered at every turn. I submit upon the whole case that it is possible so to construe section 22 and its

various subsections as to give effect to the whole of the matters which require to be provided for, and yet so as to leave the legislature of Manitoba in the free and untrammelled possession of the powers which *prima facie* were given to it under the initial words of the section.

(Mr. BLAKE was then heard in reply.)

The Lord CHANCELLOR.—In the old Canada, before the separation into the provinces of Ontario and Quebec, the old province of Quebec—I think it was called Quebec?

Mr. BLAKE.—Yes, at one time.

The Lord CHANCELLOR.—Included Ontario and Quebec?

Mr. BLAKE.—Lower Canada and Upper Canada is at present Quebec and Ontario.

The Lord CHANCELLOR.—Had they latterly separate legislatures?

Mr. BLAKE.—No, my Lord, the province was a united province.

The Lord CHANCELLOR.—It remained so down to?

Mr. BLAKE.—From 1841 to 1867. They had a sort of double system. They attempted to create an imperfect federation and a common legislature; for instance they had an Attorney General for Upper Canada and an Attorney General for Lower Canada, but the legislature was common.

The Lord CHANCELLOR.—At that time if you take Ontario and Quebec together, would there be an opposite policy in regard to religious faith?

Mr. BLAKE.—That depends upon the time your Lordship takes, because the population of Ontario was increasing fast, much faster than the population of the province of Quebec; but at the end of the time, I should think I am right in saying that in the aggregate there would be a Protestant popular majority, but the circumstances were such that perhaps that might not answer the question that is in your Lordship's mind, because the distribution of the population has a good deal to do with it.

The Lord CHANCELLOR.—It is not so material which party is actually in the majority, because at all events if the Protestants were in a majority in the Commons House, the Catholics would be in so large a minority that they would be a very substantial power in opposing legislation.

Mr. BLAKE.—A very substantial power.

The Lord CHANCELLOR.—Of course when they came to be separated into two provinces a totally different state of things arose, because in such case, though in opposite directions as regards the opposite creeds, there would be a very large majority and a very small minority in each separate province.

Mr. BLAKE.—Your Lordship has just hit the point.

The Lord CHANCELLOR.—At all events there was a predominate majority in Quebec of Catholics and a predominant majority in Ontario of Protestants.

Mr. BLAKE.—Yes, and they were in a common legislature, with equal numbers in the legislature, although the Protestant province had the larger population. The practical result was that with the division of parties and so forth, it was impossible for the Protestants of Ontario to abolish the separate schools which had been, after a long contest, established in that province, and on the other hand the Protestants were sufficiently powerful to protect their brethren in Quebec from any encroachment on their rights.

Lord WATSON.—Legislation became impossible except on the footing that they were to be dealt with as two separate states.

Mr. BLAKE.—Yes, but each side agreed before the separation which, as your Lordship said, left a very small minority of a different faith in each province, each side agreed to stereotype the situation. That is public and notorious.

The Lord CHANCELLOR.—It appears on the face of the legislation.

Mr. BLAKE.—Yes, it appears on the face of the legislation; and the public documents preceding the legislation show that fact.

Lord MACNAGHTEN.—You do not know what the population in Manitoba amounted to, and how it was divided when the province of Manitoba came in? I thought it was in the pleadings in the former case, but I cannot find it.

Mr. BLAKE.—No, my Lord, I do not know how many there were; there were very few. My friend, Mr. Ewart, who knows, says about 15,000; of course that excludes Indians.

Lord MACNAGHTEN.—Yes, 15,000 of each.

Mr. BLAKE.—No, my Lord, I think—I think it was only 11,000 or 12,000 altogether; but he says 15,000 altogether.

Lord MACNAGHTEN.—I thought the Catholics were rather in the majority at that time.

Mr. BLAKE.—My friend is not able to say. We know that they were about equal, but which had the slight majority we are not able to tell your Lordship, but it was quite palpable that that condition of things was a temporary condition, and would be changed in one obvious direction. So thought all those who had great expectations of the rapid settlement of the country, and therefore the future there certainly offered even more cause for anticipatory provision than the case of the old provinces.

Now, I do not know that my duty is to detain your Lordships at any length in reply.

Lord SHAND.—I think your argument anticipated all the points that have been put.

Mr. BLAKE.—There was just one single observation that I desired to make in reference to a suggestion made by one of your Lordships.

Lord WATSON.—I do not think there was any part of the argument which was not anticipated, with the exception of one point. I do not know how far you think it necessary to deal with it, and that was the suggestion last made that a particular right or privilege, or a condition of matters which was created in favour of all the community could not be resolved into a privilege or right of the majority at the time when it was created who had become the minority under the new legislation.

Mr. BLAKE.—Before answering your Lordship's question, I have just had a book put into my hands which shows that my recollection was nearly correct. "The population of the Red River Settlement in 1870 was composed of 2,000 whites, 5,000 English half-breeds, and 5,000 French half-breeds," making 12,000 as the population in 1870.

The Lord CHANCELLOR.—The French half-breeds were presumably Catholics and the English half-breeds were probably Protestants, and the whites might have been some of one and some of the other.

Mr. BLAKE.—The English half-breeds would be partly Protestants and partly Catholics. I should gather that there was probably a slight preponderance of Catholics.

Lord WATSON.—You must make some allowance for those who were indifferent.

Mr. BLAKE.—Then, my Lord, I own that I think my learned friend's suggestion, to which Lord Watson has directed my attention, has no value unless you apply it in the concrete; in the abstract it has no value. What is your system? The legislature is always legislating presumably for the benefit of the whole community. Even although it legislates in respect of a part of the community it legislates in respect of that part in accordance, as it believes, with the interest of the whole, and when the legislation comprehends the whole it still may be of a character which specially affects part, by recognizing a division of the whole into parts and by granting rights and privileges to parts of the community. My learned friend has not been able to show by any arguments appreciable by a less subtle intellect than his own that there were not rights and privileges of the Roman Catholic minority accorded to it by this legislation.

Lord WATSON.—I think under these Acts that it is obvious that they are referring to what are considered by these parties to be privileges.

Mr. BLAKE.—Yes, my Lord. Of course your Lordship must remember that it is their judgment which is to prevail.

Lord WATSON.—Privileges conferred by Acts of Parliament sometimes ———

Mr. BLAKE.—Yes. It may be *damnosa hereditas*; but they wanted denominational schools, and those denominational schools were considered a privilege. Their right to be separated in respect of education is a presumable privilege which they were certainly granted by this law, and that has been removed. I may add this. My learned friend suggested that the board under the last of the Acts was differently constituted, and yet there had been no appeal; but it is quite clear that both with reference to the division



## Manitoba School Case.

of the school sections, and with reference to the school books and so forth, the board was deprived of authority on the later occasion. It was a very remote argument. The Roman Catholics were well aware that the appeal in this case was not to be a technical appeal, and unless they could prove substantial injustice they could not get redress. And to say that because when the population was about equal, the whole of the legislation was based on the theory of equality—twelve Roman Catholic school districts and twelve Protestant school districts—and the school rate equally divided because the school population was equally divided, it would be a substantial iniquity to recognize the later and changed conditions, and to make true equality continue by a division of the rate in proportion to the population, which was the actual result realized originally would have been a pretension, which before a political tribunal, such as the Governor in Council or the Parliament of Canada, would, of course, have met with no favour whatever. Therefore I am not surprised that these amendments passed, not merely without remonstrance or appeal on the part of the Roman Catholics, but without objection in the legislature as far as we know. We do not know that they caused any commotion, or that there was any dissent from these changes. They appear to have passed with general consent and assent, still they altered the conditions so far as the whole community was concerned, so as to make them agree with the altered conditions as to population of that community; they were in truth framed to continue in the same relation and in the same circumstances, the specific rights of the minority.

There was, as I have said, one observation I wished to make, and that is that I venture to suggest to your Lordships that the sixth question requires a determination whether there were any rights or privileges created for the minority under these intermediate statutes, and whether any such rights or privileges have been infringed, and that is a question which arises, not upon any evidence, but upon a comparison of the two statutes, and must be in this sense a question of law, that it is fit for the determination of a legal tribunal. Your Lordships have before you one law, which provides one state of things. You have before you another law which it is alleged alters that state of things injuriously to the minority.

The Lord CHANCELLOR.—Having in view the contention of the respondents, it does show that there is a question of law.

Mr. BLAKE.—Yes.

The Lord CHANCELLOR.—Their contention is that supposing the question is whether rights and privileges are affected, they are not affected, because there were no rights of the minority within the meaning of the section.

Mr. BLAKE.—Quite so.

Lord SHAND.—I understand the rights you refer to are these, that about the books, and that about the assessments.

Mr. BLAKE.—I go further than that. I find a system under which there are facilities for organizing, maintaining and regulating our schools by law, and as an incident to that system, there are compulsory rates for our schools and immunity from other school rates; and also as an incident to that system a right to obtain certain grants.

Lord SHAND.—When you talk about the system does it go much deeper than what I have been now saying on the organization of the schools. It goes that depth also.

Mr. BLAKE.—Quite so.

Lord SHAND.—It goes this depth. You find that they had during that period state schools, which were denominational schools.

Mr. BLAKE.—Yes, I find a system of state schools supported by the Catholic minority—

Lord WATSON.—Supported by state money.

Mr. BLAKE.—Supported partly by state money and partly supported by money levied on the Roman Catholic minority.

Lord WATSON.—What struck me in the discussion is the point about the assessment of rates and the books.

Mr. BLAKE.—Of course that does include the action of the bodies which have the right to "strike" the rate, and the authority to regulate the schools—the board and the school trustees.

LORD SHAND.—Do you think it is necessary for us to go much deeper: that there was established a system of denominational education which was regarded as a privilege by all the parties who were in the minority?

MR. BLAKE.—No; but I should not like to be taken as acceding to any view or statement which is put to me which might be held by any perverse ingenuity as telling against me later.

LORD SHAND.—It would be a very different thing to go to the Governor General to ask him to establish a denominational system, or get him to ask the legislature to do it. I do not think you would ask that. You would ask the Governor General to do it.

MR. BLAKE.—What we ask your Lordships is, what the privileges were and how far they have been infringed; and then we propose to ask the Governor General to determine how far he will go. I do not ask your Lordship to make any suggestion as to his action, which I conceived from the beginning is political. He is to be instructed as to the law; and then his action and the action of the Parliament, will carry the thing out.

LORD SHAND.—I was not asking for a moment as to that. I was looking to see what your steps would be afterwards.

MR. BLAKE.—Yes. One step at one time. If your Lordships will allow me to advance a step by reversing this decision I shall be content.

THE LORD CHANCELLOR.—We will consider our judgment.

*Judgment of the Lords of the Judicial Committee of the Privy Council on the appeal of Brophy and others vs. The Attorney General of Manitoba, from the Supreme Court of Canada; Delivered 29th January, 1895.*

NOTE.—See ante, pages 1 to 11.

# RETURN

(20B)

To an ADDRESS of the HOUSE OF COMMONS dated the 24th April, 1895, for copies of all decisions of the Courts of Manitoba, of the Supreme Court of Canada, and of the Judicial Committee of the Imperial Privy Council, as to the constitutionality of the Manitoba School Act of 1890, or as to the rights of any minority of the population of Manitoba under the provisions of said Act, or in opposition to such provisions; also copies or statements as to any legislation by the Manitoba Legislature, or action by the Manitoba Government relative to the Manitoba school question subsequent to the School Act of 1890, that may at this time be in the knowledge or possession of the Privy Council of Canada; also minutes of hearings and proceedings before the Privy Council of Canada on applications for remedial orders or Dominion interference of any character with the school legislation of Manitoba; also copies of any orders issued or action taken by the Privy Council of Canada relative to such legislation; and all other papers or correspondence of an official character having relation to the said Manitoba School Question.

By order.

W. H. MONTAGUE,  
*Secretary of State.*

OTTAWA, 22nd May, 1895.

(*Memorandum.*)

The address of the House of Commons, dated the 24th April, 1895, calling for copies of all papers and correspondence relating to the Manitoba school question is complied with in so far as furnishing copies herewith of papers on the subject, of record in the Privy Council Office, which have not already been presented to Parliament.

JOHN J. MCGEE,  
*Clerk of the Privy Council.*

The Under Secretary of State, Ottawa.

ARCHBISHOP'S PALACE, OTTAWA, 10th January, 1895

*To His Excellency the Governor General in Council :*

MAY IT PLEASE YOUR EXCELLENCY,

We, the undersigned Catholics of the Dominion of Canada, and loyal subjects of Her Gracious Majesty the Queen, respectfully beg permission to state the following :—

That during the session of the Dominion Parliament of 1894, a petition asking for the redress of the grievances of which the Catholics of the Canadian North-west complain, in the matter of education, and signed by His Eminence the Cardinal Archbishop of Quebec and by all the Archbishops and Bishops of Canada, was presented to His Excellency the Governor General in Council and to the members of the Senate and to the members of the House of Commons.

In language full of dignity and truth, the petition of the Canadian episcopacy exposed clearly the rights of the Catholics, their duties as well as their grievances. It showed how the Catholics of Manitoba, after having enjoyed until the year 1890, the right of bringing up their children and having them educated in schools kept according to their religious convictions, were dispossessed of them in an unjust and arbitrary manner. It showed how their situation has been gradually aggravated by time and by the effects of new laws. It drew attention to the severe blows likewise dealt at the rights of the Catholics in the North-west by the ordinances of 1892, which deprived the Catholic schools of their liberty of action and special character. Then, establishing with the authority that belongs to them, and with the science by which they are distinguished, the doctrine of the Catholic church in the matter of education, the Canadian Episcopacy mentioned that parents have at the same time, the right and the duty, both by natural and divine law, of giving their children a Christian education according to their Catholic belief. The petition recalled, also, that the exercise of this right and the free fulfilment of those obligations had been guaranteed to the Catholics of the Canadian North-west by the most solemn promises, which were violated in order to impose upon our co-religionists the vexatious laws, opposed to justice and to all legitimate liberties, which to-day plunge the whole country into the most deplorable dissensions. As the petition of our bishops truthfully declare, the Catholics of the Dominion resent the injustice done to their brethren of the North-west, and we here reiterate their forcible statements and their requests desiring to confirm in a signal manner the truth of their words that pastor and flock are but one, and that together they are determined to reclaim their rights by all the constitutional means in their power. Our pastors have constituted themselves the enlightened interpreters of those rights; we shall be the devoted champions of them. Therefore we protest against the fallacious and disloyal reply of the Manitoba Government, dated the 20th October, 1894, to the order of His Excellency the Governor General in Council, dated July 26th, 1894; and, adapting the conclusions, etc., of the petition of their Lordships, the Archbishops and Bishops of Canada, with them and like them, We humbly pray for the redress of the grievances of the Catholics of Manitoba and the North-west, by the disallowance of the law of 1894, and by all other constitutional means, according to law, in regard to those laws and ordinances concerning which this prerogative of disallowance can no longer be exercised, and your petitioners will ever pray until justice be done to them.

J. ALPH. PELLETIER, ptre., curé,  
ALEXIS DUFOUR.  
FRANÇOIS LECLERC,  
ELOI DUFOUR, and 112 others.

I, the undersigned, curé of this parish, certify that the above signatures and others, also that the marks of those who could not sign are correct.

Isle aux Coudres, this 3rd day of February, 1895.

J. ALPH. PELLETIER,  
*Ptre., Curé.*

Bergeronnes, County of Saguenay, P.Q.—

ANTHONY GUAY, ptre., curé.  
RENE BOUILLAUME.  
IVES BOUILLAUME.  
FRANÇOIS MALTAIS.  
NARCISSE DALLAIRE, and 134 others.

St. Albert de Gaspé—

F. GAUTHIER, ptre., curé.  
JOSEPH JONCAS.  
JAMES BEATTIE.  
ARTHUR KELLY.  
JOHN S. ADAMS, and 74 others.

## Manitoba School Case.

St. Anne de Bellevue, County Jacques Cartier, P.Q.—

J. L. MICHAUD.

ALDERIC ROBILLARD.

JOSEPH PILON.

G. CHARLEBOIS.

EUSEBE BRUNET.

G. F. O. CHEVREFILS, ptre., curé, and 225 others.

St. Louis, County Kent, N. B.—

JOS. PELLETIER, ptre., curé.

W. JOHNSTON.

PIERRE L. RICHARD.

ANTOINE VAUTOUR.

CHARLES D. ROBICHAUD, and 166 others.

St. Narcisse, Que.—

ERNEST COSSETTE, mayor.

DESIRE CLOUTIER, ex-mayor.

HUBERT COSSETTE, councillor.

EVANGELISTE GAUTHIER, councillor,  
and 149 others.

J. A. ALLARD, O.M.I., Administrator  
of the Archdiocese

of St. Boniface, Manitoba.

Accompanying this petition is a lot of petitions signed by Catholics throughout Canada.

WINNIPEG, MAN., February 4, 1895.

JOHN J. MCGEE, Esq.,  
Clerk of the Privy Council,  
Ottawa, Ont.

### *Re* MANITOBA SCHOOL LEGISLATION.

DEAR SIR,—On behalf of the Roman Catholic minority of Her Majesty's subjects in Manitoba, I have now to ask that a day may be fixed for the hearing before His Excellency the Governor General in Council of the merits of the petitions which have been presented complaining of the two Acts of the Legislative Assembly of Manitoba passed in 1890, intitled respectively "An Act respecting the Department of Education" and "An Act respecting Public Schools." It will be remembered that, in accordance with an Order in Council of 29th December, 1892, an argument took place on the 21st January, 1893, upon certain preliminary points, involving the question of the jurisdiction of His Excellency the Governor General in Council. The decision of those points was referred to the courts, and the recent judgment of the Judicial Committee of the Privy Council has now made it clear that His Excellency has power to deal with the petitions. I have therefore to ask that an early date may be appointed for the purpose of hearing those petitions upon the merits.

Yours truly,

JOHN S. EWART.

*Memo.*—Mr. McGee notify Ewart that Council will hear him on the 26th February, 1895, at 11 o'clock a.m.

MACKENZIE BOWELL.

16th February, 1895.

*Telegram.*

OTTAWA, February 16, 1895.

To JOHN S. EWART, Q.C.,  
Winnipeg, Manitoba.

Council will hear you on 26th February instant, at 11 o'clock a.m.

JOHN J. MCGEE,  
Clerk of the Privy Council.

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ATTORNEY GENERAL, MANITOBA,

WINNIPEG, February 21, 1895.

JOHN J. MCGEE, Esq.,  
Clerk of the Privy Council of Canada,  
Ottawa, Ont.

SIR,—I have the honour to state that the government of the province of Manitoba will be represented by Mr. D'Alton McCarthy, Q.C., at the hearing of the appeal of the Roman Catholic minority before the Governor General in Council on the 26th instant.

I have the honour to be, sir,

Your obedient servant,

CLIFFORD SIFTON,  
Attorney General.

To His Excellency The Governor General in Council.

The undersigned begs respectfully to present that :

Whereas certain citizens of the city of Toronto having a right to vote for members to serve in the legislative assembly in respect to the property held by them in the city of Toronto did by their petition duly made and presented to me according to law request that I, as mayor of the city of Toronto, should call a public meeting in the said city for the purpose of protesting against any interference on the part of the Government of Canada with the school system of the province of Manitoba.

And whereas in compliance with the said petition, I, Warring Kennedy, mayor of the said city of Toronto, did, by proclamation duly made convene a public meeting in the pavilion in the said city on the eleventh day of March, 1895.

And whereas in pursuance of a resolution to that effect, I, the said Warring Kennedy, took the chair and presided at the said meeting and George A. Chapman was appointed secretary.

Now, therefore, this memorial is to present to your Excellency that the following resolutions were carried at the said meeting :—

Moved by Mr. Dalton McCarthy, Q.C., M.P., and seconded by Mr. Wm. Mortimer Clarke, Q.C., and resolved :

“That in the opinion of this meeting the subject of education is a matter of essentially local concern and though the right of appeal to His Excellency the Governor General in Council is by the British North America Act and in the case of Manitoba by its Constitutional Act given in certain cases, yet it is a power so opposed to the governing principle which regulates the distribution of legislative authority between the Dominion and the provinces, and its enforcement would be so humiliating to the province as to which it is exercised, that it is a jurisdiction which should never be assumed except in cases of the most flagrant abuse of provincial power.”

Moved by Mr. Stapleton Caldicott, and seconded by Mr. A. T. Hunter, and resolved :—

“That this meeting recalling that the legislature of Manitoba owing to the exceptional difficulties which were occasioned by the presence of the various nationalities that are settled in the province, Menonites, French and Scotch half-breeds, Icelanders, French

## Manitoba School Case.

speaking Canadians and others is of opinion if its inhabitants were to be made useful and intelligent citizens of Canada that a national system of education free and open to all without preference or privilege was best designed to secure the attainment of that desirable result and that the demand of a small minority to have the School Act annulled by the federal power is a claim which calls for the most earnest and determined opposition from the people of Ontario, who in this emergency should stand ready to defend the rights and liberties of her sister province."

Moved by the Rev. Dr. Caven, and seconded by Mr. Alderman R. Graham, and resolved :

"That although it has been determined by the Judicial Committee of the Privy Council that the Roman Catholic minority of Manitoba has a right to appeal to the Government of Canada to have re-established the separate school system which was abolished by the Public School Act of 1890, this meeting is of opinion that no just ground or pretence has been alleged and none in fact exists for interference by the Dominion Government with the province in its control and management of the education of its youth."

Moved by Mr. E. D. Armour, Q.C., seconded by Mr. Alderman Joliffe, and resolved :

"That the citizens of Toronto in mass meeting assembled do hereby respectfully protest against His Excellency the Governor General in Council interfering with the province of Manitoba in respect of its Public School Act and they call upon their representatives in the House of Commons irrespective of party considerations to represent to the advisers of the Governor General how strongly they feel in this matter."

And it was further resolved at the said meeting as follows :

"That the foregoing resolutions be embodied in a memorial to be signed by the chairman and countersigned by the secretary of this meeting for transmission to His Excellency the Governor General."

Wherefore in pursuance of the resolution lastly above transcribed I have signed this memorial and the same has been countersigned by the secretary of the said meeting.

WARRING KENNEDY, Mayor.

*Chairman of Meeting.*

[Countersigned]

GEO. A. CHAPMAN, Secretary of the Meeting.  
TORONTO, 12th March, 1895.

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BISHOP'S COURT, WINNIPEG, MAN., 22nd February, 1895.

The Honourable Sir Mackenzie Bowell, Premier, &c.,

SIR,—I inclose a letter, which I have thought it well to write to you for the government to explain the views held by the Church of England as expressed in its Synod. These views are, I believe, held by almost all our clergy ; but, no doubt, a good many of our laity do not feel so strongly. Many are quite satisfied with our present schools and some would not object to secularized schools altogether.

For distinctness I have had the letter typewritten.

I am, sir,

Respectfully yours,

R., RUPERT'S LAND.

BISHOP'S COURT, WINNIPEG, MAN., 22nd February, 1895.

The Honourable Sir Mackenzie Bowell, Senator, Prime Minister, &c., Ottawa, Ont.

SIR,—As I understand that various representations are being made to the Government on the school question, I think it well to place before you for the information of the Government the views of the Church of England in Manitoba.

The views I am to express are held almost unanimously by the clergy and by the laity of the church elected as representatives in Synod.

They may be summed up in the following resolutions passed by the Diocesan Synod of Rupert's Land in January, 1893.

2. Resolved that while this Synod would gladly see a larger measure of religious teaching in our schools than at present prevails, it trusts that every effort will be made, both by the educational authorities and by the Christian public generally, to render existing regulations on the subject as widely operative and efficient as possible.

3. Resolved that whatever changes in the school policy of this province may in the future be required for the satisfactory solution of the educational problems with which as a province we have to deal, this Synod stands pledged to resist to the utmost any attempt to secularize our public schools. The Church of England, while acknowledging that a good secular education is a necessity of our age, considers that the inculcation of sound principles of life is of even more importance than material knowledge, and, therefore, that it is essential that education in the case of the young should be accompanied with religious instruction and that the teaching of morals should be founded on Divine sanction.

At the time of the transfer of the country to Canada the Church of England had one or more church schools in every parish. It did not seem, however, possible to maintain them in addition to the ministry, in view of the expected growth of the province, with the efficiency that was desirable. The Church of England was therefore anxious to unite in the support of common public schools, hoping that there would be in them more or less satisfactory religious instruction. But we have had to regret that circumstances have made it impossible to obtain what the Church desires.

The system established at first by the local legislature by which the Roman Catholics had separate schools entirely under their own management, and all others grouped under the name of Protestants, had common schools, never worked to our satisfaction, though we always had the hope of improvement.

That system failed to give the state a proper security for good secular instruction in the Roman Catholic schools, while it gave that body an unfair advantage over other denominations—an advantage which in this province it was not entitled to by any numerical majority. But, as we realized that like advantages could not be given to other bodies in the circumstances of the country, we submitted to the denominational disadvantage, in the hope that a fairly satisfactory system of religious instruction might be established in the so-called Protestant schools. We never thought of any instruction beyond what is recognized in England by the state as unsectarian—the opening of the school with authorized forms of prayer and the reading of the Bible—the reading and teaching and learning by heart selected portions of the Holy Scripture and the learning of the Apostles' Creed, the Ten Commandments, and the Lord's Prayer.

This is not regarded by the state authorities in England as Protestant instruction, but as unsectarian, that is as giving instruction on what is believed in in common by at least all the great religious bodies, Roman Catholic and Protestant. But so many members, placed by the government on the Protestant section of the Board of Education, were favourable to simply secular instruction, that our hope was never realized. Arrangements were under consideration for giving instruction in selected passages of the Bible and the Apostles' Creed was required to be learned by heart, but neither it nor the Bible was ever taught.

Then the present system of education was established. As a church we took no part in the struggle. The new system does not satisfy us any more than the old. But I address you now, as we are anxious that the schools should not become still more unsatisfactory.



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At the present time we gladly welcome in the short prayer and the reading of Holy Scripture, an acknowledgment of the need of the divine guidance and blessing and of the need and place of that divine word, that should be the lamp to our feet and the light to our path. There is also the learning and teaching of the Ten Commandments, as the divine foundation of moral instruction.

Now, what would be the meaning of the exclusion of these and the secularizing of the schools thereby? Surely not merely the loss of these important advantages, but the exclusion from instruction of every allusion to God or what could touch religion in fact or history. It would be, I dare to say, impossible to teach English literature at all adequately on such terms, yet contrary to the spirit and intent of the law to act otherwise.

And what reason can be given for secularizing the schools?

They will not be more satisfactory to the Roman Catholics. The religious services are in no true sense Protestant. There never was in the Protestant schools under the old system any instruction properly to be called Protestant. There was immeasurably less religious instruction than in the board schools of London, yet Cardinal Vaughan and the most of the Roman Catholic clergy supported the candidates favourable to such teaching in preference to those advocating the secularizing of the schools.

No doubt such schools are not satisfactory to Roman Catholics but the reason is that no schools can be satisfactory to them that are not taught by teachers of their own communion and that do not give religious teaching according to the requirements of their church.

So the only effect of secularizing the schools will be to make them more obnoxious to the Church of England and many others, while no satisfaction will be given to the Roman Catholics.

The Church of England here unites in feeling with the judgment recorded by the General Synod of the Church of England in the Dominion of Canada at its meeting in Toronto in September, 1893.

"Religious teaching in our public schools is absolutely necessary in order to fulfil the true purpose of education and to conserve the highest interests of the nation at large."

We are not indifferent then to the happy circumstances of so many national schools in England in which there is definite religious instruction; but recognizing the difficulties in the way of this in the circumstances of this province, we should rejoice in such an amount of non-sectarian religious instruction as is allowed in the board schools in England.

I wish then on the part of the Church of England to enter the strongest protest against any proposition to secularize our public schools—while at the same time we cannot but deprecate the granting of privileges to the Roman Catholic body not shared in by other religious bodies.

I am faithfully yours,

R., RUPERT'S LAND.

*EXTRACT from a Report of the Committee of the Honourable the Privy Council, approved by His Excellency on the 7th July, 1894.*

On a memorandum, dated 3rd July, 1894, from the Minister of Justice, recommending that a copy of the accompanying memorial of His Eminence the Cardinal Archbishop of Quebec, and the Archbishops and Bishops of the Roman Catholic Church in Canada, regarding education in Manitoba and the North-west Territories, be forwarded to His Honour the Lieutenant-Governor of the North-west Territories.

The Committee submit the same for Your Excellency's approval.

JOHN J. MCGEE,  
*Clerk of the Privy Council*

*To His Excellency the Governor General of Canada in Council :*

MAY IT PLEASE YOUR EXCELLENCY,—

The petition of the undersigned, His Eminence the Cardinal Archbishop of Quebec, the Most Reverend Archbishops and the Right Reverend the Bishops of the Roman Catholic Church in the Dominion of Canada, devoted subjects of Her Most Gracious Majesty the Queen, humbly sheweth :

1. Since the establishment of the province of Manitoba, until 1890, the public schools of the province, as established by law, were either Protestant or Catholic schools. They all enjoyed the same rights and received respectively their legitimate share of legislative grants. They were independent one from another, being conducted directly and supported by the respective sections of the population for which they were established. The system gave such satisfaction that it was the cause of no complaint, and the two sections of the population with their respective schools lived in peace, concord, harmony and mutual good will.

2. In 1890, laws were passed, changing the school system and replacing it by other enactments which are, for a portion of the community, a source of grief, regret and hardship. Practically, and in spite of all assertions to the contrary, the result of the new system is purely and simply the legal suppression of all Catholic schools and the maintenance of all Protestant schools, with all the rights and privileges they enjoyed previous to the school laws of 1890. Catholic schools are abolished by law, while Protestant schools have nothing to suffer from the new enactment, nay, they gain by it as the Catholic ratepayers have now to help to the support of Protestant schools, which are exactly what they were, and to which, naturally, Catholic parents cannot conscientiously send their children.

3. The Public Schools Act of 1890 being 53 Vic., chap. 38, now chap. 127, of Revised Statutes of 1891, decrees in sections 241-242, that "in cases where, before the coming into force of this Act, Catholic school districts have been established, covering the same territory as any Protestant school district, such Catholic school districts shall cease to exist."

The law has been put into force wheresoever it could be applied, for instance in Winnipeg, Brandon, &c. There the Catholic trustees have ceased to be recognized since the 1st of May, 1890, while the Protestant trustees remained in office and caused taxes to be levied on Catholic as well as Protestant parents, notwithstanding the fact that no Catholic children are attending the said Protestant schools.

4. Section 192 says: "Religious exercises in the public schools shall be conducted according to regulations of the Advisory Board." It is therefore lawful to have prayers and religious exercises in the public schools of Manitoba, provided the same are fixed and determined by the Advisory Board. Just now, all the members of the said board are Protestants, and owing to the condition of the country it is clear that Catholics will never have but very little influence, if any, in the said board.

Therefore Protestant children will be allowed to pray according to their parents' desire, while Catholic children are deprived of the same liberty, and this under the penalty of forfeiting the legitimate share of public money, because in order to secure to his or her school the government grant, the teacher must declare under oath that no prayer nor religious exercise, except as prescribed by the Advisory Board, has been used in the school. Suppose a school attended exclusively by Catholic children, with a Catholic teacher, the said school would be deprived of the legislative grant, should the teacher or the pupils cross themselves or make use of the Hail, Mary.

5. Religious instruction is not prohibited in the public schools of Manitoba; in that respect and under the heading of morals, the regulations framed under the old system by the Protestant section of the board are retained under the new system; "stories, memory gems, sentiments in the school lessons, examination of motives, didactic talks, teaching the Ten Commandments, &c., are means to be employed." All this of course is to be used from a Protestant point of view, so much so that the actual chairman of the Advisory Board, who had always been the chairman of the Protestant section of the Board of Education, and who is no less a personage than the Archbishop of Rupert's

## Manitoba School Case.

Land, declared before his Synod, in 1893, that the above quoted privileges "are not small things in themselves, but they are doubly important because they carry with them for the teacher a degree of liberty in his teaching of what may come before the classes in their literature and otherwise," and His Grace adds: "The teachers who ignore these exercises can hardly be realizing their position as Christian men."

The liberty above mentioned is naturally for Protestants alone because it is enacted that those public schools are "non-sectarian" that is to say, that no Catholic teaching can be permitted while facilities are afforded to zealous and intelligent Protestant teachers to impress upon their pupils their own religious convictions.

See Appendix A, pamphlet by Archbishop Taché, April, 1893, and Appendix B, Dr. J. H. Morrison's paper read before the junior Liberal Conservative Association of St. John, N.B., 13th Feb., 1894.

6. For the last four years the Catholics of Manitoba have been subjected to the unfair and unjust treatment resulting from the change in the school laws in 1890. They asked in vain for relief; instead of a remedy, they have been made the victims of a fresh injustice in the new Manitoba law, 57 Vic., ch. 28, assented to on 2nd March, 1894.

The clause 151 of the Public Schools Act of 1890 reads as follows: "Any school not conducted according to all the provisions of this or any act in force for the time being, or the regulations of the Department of Education or the Advisory Board, shall not be deemed a public school within the meaning of the law, and such schools shall not participate in the legislative grant."

To this provision, in force since 1890, has been added this year, the section 4 of the new law which reads as follows: "Section 151 of chapter 127 is hereby amended by adding thereto the following words: nor the municipal grant,—nor shall any school assessment be levied or school taxes be collected for the benefit of such school."

The consequence of this new enactment is that no municipality even one exclusively Catholic, without a single Protestant in its limits, has any power to levy a single dollar for Catholic schools, while a Catholic municipality where there are ten Protestant children is obliged by law, to levy on all the Catholics as well as on the parents of the ten Protestant children the money required for the education of the said ten Protestant children.

7. The same law of 1894 goes further and decrees the confiscation of all school property in all the districts which do not submit their schools to the new law and it says in section 2: "In every case in which the organization of a school district fails to be continued . . . . the council of the municipality in which such school district lies shall have full power and authority, and it shall be the duty of the said council to take charge of all the property of such school district, real and personal and to administer the same for the benefit of the creditors of such school district, if any."

Such is the real position of the Catholics of Manitoba, though all their school property has been acquired with their own money, without any help from Protestant purse or from public fund, and in Protestant municipalities the Catholic school property, real or personal, goes to the benefit of Protestants.

8. The example given in Manitoba has been partly followed in the North-west Territories. There the Catholic separate schools have been retained, but, in virtue of the ordinance no. 22, A.D. 1892, they are deprived of their liberty of action and of the character which distinguishes them from other schools. So that, in reality, the Catholics of the North-west are reduced, partly at least, to the hardships imposed upon their brethren of Manitoba. In both cases the result is very detrimental to the cause of education and really has in both cases created bad feelings, dissensions and the most deplorable results.

See Appendix C, Memorial of Archbishop Taché, March, 1894.

9. The undersigned take the liberty to affirm that they deeply regret the condition of affairs above mentioned. The painful experience of the Catholics of Manitoba and of the North-west Territories is also resented by all the Catholics of the Dominion. The undersigned have no hesitation in stating that a similar feeling certainly exists among many Protestants who, though separated by faith, are united with the Catholics in a sentiment of justice, fair play and the desire of the prosperity of their common country.

The undersigned appreciate the political advantages enjoyed by Canada and have no desire for any other regime, satisfied that there is, in the institutions of the country and in the spirit of justice and conciliation which prevails among its inhabitants, a remedy against what, just now, is the subject of their complaints. The Canadian constitution acknowledges equal rights for all citizens and for all classes of citizens. Therefore, Canadians should not be oppressed because they are Catholics.

10. The undersigned cannot shut their eyes to a fact closely connected with the history of their country: Catholic missionaries have not waited for the facilities and material advantages now offered by Canada, to bring thereto the light of Christian civilization. On the contrary, they were the first pioneers of the sacred cause and they sealed their missions with their blood. Without fear or hesitation they buried their existence among the most barbarous savages, whom they tamed and induced to peaceably hand over their own country to the Canadian authorities. The Catholic missionaries accomplished that noble task on the banks of the Saskatchewan and Red Rivers, as well as on those of the St. Lawrence and the Ottawa, and they did this, when, alongside of the crosses they planted, they fondly rested their gaze on the fleur de lis flag.

Everyone knows that the same missionaries, while their eyes were yet moist with the tears they naturally shed when they had to sever the ties by which their whole existence had hitherto been bound up, were as faithful to British dominion as they had been to the banner of the land of their origin. It is well known that it is largely due to the fidelity of Canadian Catholic apostles that England owes the quiet possession of the noble colony which France had planted on the St. Lawrence and its tributaries. What then happened among the inhabitants of La Nouvelle France was possible solely because its inhabitants were Catholics and because England had respected their religious convictions. The knowledge of what they allude to renders more incomprehensible to the undersigned the fact that the Catholics of Manitoba and of the North-west are badly treated because they are Catholics.

11. Catholics believe in the necessity of religious instruction in the schools. This conviction imposes upon them conscientious obligations, and these obligations give them rights of which they cannot be deprived. They cannot be satisfied by the saying: Others do not believe as you do, therefore you must change your convictions; others are satisfied and even wish that their children should be brought up and educated in such a way, therefore, you Catholics, you cannot stand aside, or, if you do, do so at your own expense. Such an argument is neither fair nor just.

The undersigned, pastors of souls, are at one with their flocks in insisting on the rights they claim, and they are fully determined to preserve them in their integrity. There is in this a question of justice, of natural equity, of prudence and of social economy, closely connected with the fundamental interests of the country.

The Catholics, being under the obligation of educating their children according to their faith and the religious principles they profess, have, in our free country, the right of establishing their separate schools, and that right they must be allowed to exercise without being forced to the burden of double school taxes.

The undersigned also take the liberty to state, that the Federal Parliament has endowed the schools of Manitoba and of the North-west with a large domain in assigning to the support of such schools the eighteenth part of all public lands. Those lands are Canadian property, and how could the Federal Parliament consent to deprive the Catholics of these countries of their legitimate share in the profit derived from such lands simply because this class of citizens adheres to its religious convictions and wishes to comply with conscientious obligations?

See Appendix 'D, "A Page of the History of the Schools of Manitoba," by Archbishop Taché.

12. The undersigned petitioners are fully aware that Manitoba and the North-west Territories were received into confederation after promises made to the first inhabitants of that vast country in the name and by the authority of Her Majesty. The immediate representative of our beloved Queen assured them that "respect and attention would be extended to the different religious persuasions and that, on their union with Canada, all their civil and religious rights and privileges would be respected." In the estima-

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tion of Catholics, their religious rights are not respected and their religious persuasions are not treated with respect and attention, when there are difficulties thrown, by law, in the way of securing to their children an education conducted in accordance with their religious convictions.

13. The undersigned, while petitioning as they do, repudiate the idea of interference with political parties, or with the direction of affairs purely political or temporal. Their sole object is to secure for the Catholics a protection needed for the accomplishment of their religious obligations, and it is in that view, and in that view only, that they petition His Excellency the Governor General in Council and ask the honourable members of the Senate and of the Commons of Canada, of whatsoever party they may be, to help in a fair settlement of the actual difficulties.

Therefore, your petitioners humbly pray His Excellency the Governor General in Council :

1. To disallow the Act of Manitoba, 57 Vic., ch. 28 (1894), and intituled "An Act to amend the Public Schools Act."

2. To give such directions and make such provisions for the relief of the Roman Catholics of the province of ~~Manitoba as to His Excellency in Council~~ may seem fit, with regard to the Manitoba School Laws of 1890.

3. To communicate with the Lieutenant-Governor of the North-west Territories, in order that, by amending ordinances, redress should be given to meet the grievances of which the Catholics of the North-west complain on account of the Ordinance No. 22, assented to at Regina on the 31st of December, 1892.

And your petitioners, as in duty bound, will ever pray :

†E. A. CARDINAL TASCHEREAU, Archbishop of Quebec.

†ALEX. TACHÉ, O.M.I., Archbishop of St. Boniface.

†C. O'BRIEN, Archbishop of Halifax.

†EDOUARD CHS., Archbishop of Montreal.

†J. THOMAS DUHAMEL, Archbishop of Ottawa.

†JOHN WALSH, Archbishop of Toronto.

†JAMES VINCENT CLEARY, Archbishop of Kingston.

†L. N., Archbishop of Cyrine,

Coadjutor of His Eminence Cardinal Taschereau.

†VITAL, J., O.M.I., Evêque de St. Albert.

†L. F., Evêque des Trois-Rivières.

†ISIDORE CLUT, O.M.I., Evêque d'Arindale.

†EMILE, O.M.I.,

Evêque d'Ibora, Vic. Apostolique d'Athab. Mackenzie.

†ALBERT, O.M.I., Evêque de Moy, Vic. Apostolique.

†PAUL DURIEU, O.M.I., Evêque de N.W.

†L. Z., Bishop of St. Hyacinthe.

†JOHN CAMERON, Bishop of Antigonish.

†J. SWEENEY, Bishop of St. John, N.B.

†JAMES ROGERS, Bishop of Chatham.

†JAMES CHARLES McDONALD, Bishop of Charlottetown.

†J. N. LEMMENS, Bishop of Victoria, Vancouver.

†T. J. DOWLING, Bishop of Hamilton.

†DENIS O'CONNOR, Bishop of London.

†R. A. O'CONNOR, Bishop of Peterborough.

†ALEXANDER MACDONALD, Bishop of Alexandria.

†JOSEPH MÉDARD, Bishop of Valleyfield.

†PAUL LAROCQUE, Bishop of Sherbrooke.

†MAXIME DECELLES, Bishop of Druzipara.

†ELPHÉZE GRAVEL, Bishop of Nicolet.

†ANDRÉ ALBERT, Evêque de Saint-Germain de Rimouski.

†NARCISSE ZÉPHIRIN,

Evêque de Cythère, Vic. Apostolique de Pontiac.

†M. T. LABRECQUE, Evêque de Chicoutimi.

*EXTRACT from a Report of the Committee of the Honourable the Privy Council, approved by His Excellency on the 26th July, 1894.*

The Committee of the Privy Council have had under consideration a memorial addressed to Your Excellency in Council by His Eminence Cardinal Taschereau, Archbishop of Quebec, and by the Roman Catholic Archbishops and Bishops in Canada on the subject of the laws relating to education in the province of Manitoba and in the North-west Territories.

The memorial sets forth the condition of the public schools in the province of Manitoba from the establishment of that province until 1890 and proceeds to state that: "In 1890 laws were passed changing the school system and replacing it by other enactments which are, for a portion of the community, a source of grief, regret and hardship." The memorial asserts that: "The result of the new system is purely and simply the legal suppression of all Catholic schools and the maintenance of all Protestant schools, with all the rights and privileges they enjoyed previous to the school laws of 1890," and that the "Catholic ratepayers have now to help to the support of Protestant schools which are exactly what they were, and to which, naturally, Catholic parents cannot conscientiously send their children."

The memorial proceeds to state, in detail, some of the provisions of the enactments of Manitoba of 1890 which are claimed to have the effect previously stated.

It further states that "For the last four years the Catholics of Manitoba have been subjected to the unfair and unjust treatment resulting from the change in the school laws of 1890"; that "They asked in vain for relief; instead of a remedy they have been made the victims of a fresh injustice in the new Manitoba law, 57 Victoria, chapter 28, assented to on March 2nd, 1894," one of the provisions of which forbids aid be given by any municipality to any school not conducted according to the school system adopted in 1890. The effect of this enactment is stated by the memorialists to be "That no municipality, even one exclusively Catholic, without a single Protestant in its limits, has any power to levy a single dollar for Catholic schools, while a Catholic municipality where there are ten Protestant children is obliged by law to levy on all the Catholics, as well as on the parents of the ten Protestant children the money required for the education of the ten Protestant children."

The memorial complains also that the enactment of 1894 "Decrees the confiscation of all school property in all the districts which do not submit their schools to the new law" even though the school property may have been acquired by Catholics with their own money.

The memorial further states that in the North-west Territories, "The Catholic separate schools have been retained, but in virtue of the ordinance number 22, of 1892, they are deprived of their liberty of action and of the character which distinguishes them from other schools," and that there, as well as in Manitoba, the result is very detrimental to the cause of education and really has, in both cases, created bad feelings, dissensions, and the most deplorable results." It adds that "The painful experience of the Catholics of Manitoba and of the North-west Territories is also resented by all the Catholics of the Dominion," and has excited sympathy "among many Protestants who, though separated by faith are united with the Catholics in a sentiment of justice and fair play and the desire of the prosperity of their common country."

The memorialists make reference to the many claims to gratitude which Catholic missionaries have established by their work in times past, in connection with Christian missions, and in spreading civilization as well as religion throughout what are now the British possessions in North America, and in encouraging sentiments of loyalty to British rule and British institutions when those possessions came under the British flag; and they seem (properly in the view of the committee) to consider that these circumstances give a strong claim for generous recognition of the rights of Catholics in Manitoba and the North-west. They also refer to the fact: "That the Federal Parliament has endowed the schools of Manitoba and the North-west with a large domain, in assigning to the support of such schools the eighteenth part of all public lands." They cite the promise made to the inhabitants of Manitoba and the North-west Territories when

## Manitoba School Case.

Rupert's Land was acquired by Canada, in the name and by the authority of Her Majesty that "respect and attention would be extended to the different religious persuasions, and that on their union with Canada, all their civil and religious rights and privileges would be respected." The memorialists add that "In the estimation of Catholics their religious rights are not respected and their religious persuasions are not treated with respect and attention when these difficulties thrown, by law, in the way of securing to their children an education conducted in accordance with their religious convictions."

The memorialists "repudiate the idea of interference with political parties, or with the direction of affairs purely political or temporal." They state that "Their sole object is to secure for the Catholics a protection needed for the accomplishment of their religious obligations," and that "It is in that view, and in that view only, that they petition His Excellency the Governor General in Council and ask the honourable members of the Senate and of the Commons of Canada of whatsoever party they may be, to help in a fair settlement of the actual difficulties;" and they pray:

*First*—For the disallowance of the Manitoba School Act of 1894.

*Second*—To give such directions and make such provisions for the relief of the Roman Catholics of the province of Manitoba as Your Excellency in Council may see fit, with regard to the Manitoba school laws of 1890.

*Third*—To communicate with the Lieutenant Governor of the North-west Territories in order that, by amending ordinances, redress should be given to meet the grievances of which the Catholics of the North-west Territories complain on account of the Ordinance No. 22 of 1892.

The committee having taken all these matters into consideration, have the honour to recommend that a copy of the memorial above referred to, and also of this report, if approved, be transmitted to the Lieutenant Governor of Manitoba, with a request that he will lay the same before his advisers and before the legislature of that province, and that copies of the same be also sent to the Lieutenant Governor of the North-west Territories with the request that he will lay them before the executive Committee of the Territories, and the legislature thereof.

The committee beg to observe to Your Excellency that the statements which are contained in this memorial are matter of deep concern and solicitude in the interests of the Dominion at large, and that it is a matter of the utmost importance to the people of Canada that the laws which prevail in any portion of the Dominion should not be such as to occasion complaint of oppression or injustice to any class or portion of the people, but should be recognized as establishing perfect freedom and equality, especially in all matters relating to religion and religious belief and practice; and the Committee therefore humbly advise that Your Excellency may join with them in expressing the most earnest hope that the legislatures of Manitoba and of the North-west Territories respectively, may take into consideration at the earliest possible moment the complaints which are set forth in this petition, and which are said to create dissatisfaction among Roman Catholics, not only in Manitoba and the North-west Territories, but likewise throughout Canada, and may take speedy measures to give redress in all the matters in relation to which any well founded complaint or grievance be ascertained to exist.

The committee also advise that a copy of this report be sent to each of the memorialists.

All of which is respectfully submitted for Your Excellency's approval.

JOHN J. MCGEE,

*Clerk of the Privy Council.*

MONTREAL, 18th October, 1894.

To the Honourable John Costigan, Secretary of State, Ottawa.

HONOURABLE SIR,—I have been requested to forward to you the inclosed petitions.

Believe me, honourable sir,

Your obedient servant,

J. ISRAEL TARTE.

*(Translation.)*

To His Excellency The Governor General in Council :

The petition of the undersigned British and loyal subjects of Her Majesty respectfully shewth :

1. That at the time of the admission of Manitoba into confederation, it was expressly understood that the new province would have a system of separate schools, based upon the then existing and still existing system of Protestant schools in the province of Quebec.

2. That conformably to this understanding and to the legislative enactments which followed it, separate schools were established in 1871, and remained in existence until 1890.

3. That the majority of the legislature of Manitoba, violating the liberties and rights of the minority, abolished the said schools and substituted thereto a system of public schools, in contravention to the clear understanding which had been come to and which had been officially recognized for twenty years.

4. That the prerogative of disallowance which might have been exercised with regard to the legislation of Manitoba upon the subject of schools was not exercised, although on several occasions in cases of less importance the Governor General in Council exercised said prerogative.

5. That the references, at the instance of Your Excellency in Council, made to the courts, had not had the effect of redressing the wrongs of which the Roman Catholic population of Manitoba rightly complain.

6. That the appeals made to Your Excellency do not deprive Your Excellency of any of the rights which Your Excellency possesses to hear the appeal of a minority and to take such measures so as to remove the wrongs which such minority suffers.

7. That in 1894, the legislature of the province of Manitoba enacted laws essentially affecting the rights of Catholics.

8. That said laws were transmitted to Your Excellency at the beginning of March last.

9. That the legislature of the North-west Territories has peremptorily refused to amend ordinance 22 which prejudicially affects the rights of the Roman Catholics living in the Territories.

Therefore your petitioners pray Your Excellency in Council to be pleased to :

1. To disallow the Act of the legislature of Manitoba, 57 Victoria, chapter 28 (1894) and intituled : "An Act to amend the Public Schools Act."

2. To give such instructions and take such measures that Your Excellency in Council will think the most apt to redress the wrongs which the Roman Catholics of Manitoba now suffer in consequence of the school laws passed by the Manitoba legislature in 1890.

3. To communicate again with the Lieutenant Governor of the Territories, so that the ordinances may be amended in such a manner that the wrongs of which the Catholics of the North-west complain and which are the result of the ordinance No. 22, sanctioned at Regina the 31st December, 1892, may be redressed.



## Manitoba School Case.

Your petitioners will ever pray that the Roman Catholics of the North-west Territories and of Manitoba be put in the same position as that freely enjoyed by the Protestants of the province of Quebec.

WM. ST. JEAN, FILS,  
LAZARE PAGÈ,  
OLIVIER MASSON,  
H. DUFOUR  
and 288 others.

Montreal, 15th October, 1894.

D. MONET, N.P.  
J. ISRAËL TARTE, M.P.  
F. C. CHOQUET, AVOCAT, C.R.  
JOSEPH FOURNIER, Montreal  
and 124 others from Montreal.

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L. A. LORD, N.P.  
HERCULE MILOT, J.P.  
and 99 others from Yamachiche.

I, the undersigned, certify that the above signatures have been taken with the consent of the signers and in my presence.

Yamachiche, this 15th day of October, 1894.

L. A. LORD, N.P.

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J. E. POIRIER, ptre, curé.  
DENIS RIOPEL,  
and 48 others from St. Mathieu, Co. St. Maurice.

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ELZEAR MILOT, Maire.  
P. HEROUÉ, J.P.,  
and 67 others from St. Sévère, Co. St. Maurice.

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P. CLOUTIER, ptre., curé de St. Etienne des Grès.  
DR. L. B. BEAUCHENIN;  
and 339 others from St. Etienne, Co. St. Maurice.

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Moved by J. Alfred Pelland, seconded by Louis Berger, that the "Club Papineau," after having considered the above petition resolved to adopt it and promises to the promoters of this patriotic work their most active support.

PHILÉAS BROUSSEAU,  
*President.*

J. E. BARIL,  
*Secretary.*

*EXTRACT from a Report of the Committee of the Honourable the Privy Council, approved by His Excellency on the 6th March, 1895.*

The committee of the Privy Council have had under consideration certain correspondence and petitions concerning chapter 28 of the statutes of the province of Manitoba passed in the fifty-seventh year of Her Majesty's reign (1894) intituled:—"An Act to amend the Public Schools Act" which Act was assented to on the 2nd March, 1894, and received by the Secretary of State for Canada on the 6th March, 1894.

The committee have also had under consideration a report hereto attached from the Minister of Justice in respect to the same, in which they concur.

The committee advise that a certified copy thereof be forwarded to the Lieutenant Governor of Manitoba and also to Mr. Ewart, Q.C., of Winnipeg, the solicitor of the petitioners.

All which is respectfully submitted for your Excellency's approval.

JOHN J. MCGEE, *Clerk of the Privy Council.*

DEPARTMENT OF JUSTICE, OTTAWA, CANADA,

5th February, 1895.

To His Excellency The Governor General in Council.

The undersigned has the honour to report that certain correspondence and petitions have been referred to him concerning chapter 28 of the statutes of the province of Manitoba, passed in the fifty-seventh year of Her Majesty's reign (1894), intituled:

"An Act to amend the Public Schools Act" which Act was assented to on the 2nd of March, 1894, and received by the Secretary of State for Canada on the 6th of March, 1894.

The correspondence and petitions include the following:—

1. A petition of His Eminence the Cardinal Archbishop of Quebec, the Most Reverend Archbishops and the Right Reverend the Bishops of the Roman Catholic Church of Canada, and others.

These petitions having regard to the Statute in question seek the exercise of the power of disallowance.

The undersigned observes that, while the enactment of the amending statute is made the occasion for the submission of these petitions, the grounds of complaint are mainly directed to the principal legislation of 1890 rather than to the amending Act now under consideration, and so far as any grounds are urged against the validity of the latter Act they do not differ in character from those which have been previously set up and are still being pressed with regard to the statute of which it is an amendment. It appears to the undersigned, and the petitioners have not attempted to controvert the view, that any question which might be raised as to the validity of this amendment has been set at rest by the decision of the judicial committee of the Privy Council in the case of *Barrett vs. The City of Winnipeg*, in which the principal legislation was held to be *intra vires* of the provincial legislature.

If the petitioners were to contend that the amending legislation is of a different character and does, consistently with what has been decided, "prejudicially affect any right or privilege with respect to denominational schools which any class of persons had by law or practice in the province at the union," the question could be raised in the courts, where the matter would be judicially determined and the Act declared invalid if a sufficient case were established.

In so far as the petitioners seek the exercise of the authority which under section 22 of the Manitoba Act is vested in Your Excellency in Council by way of appeal, it appears to the undersigned that in view of the circumstances now existing it is unnecessary to deal with this feature of the petition in this report.

The undersigned, therefore, in accordance with the policy adopted respecting the Act of 1890, recommends that the statute in question be left to its operation and that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Manitoba for the information of his Government, and that a copy be also transmitted to Mr. Ewart, Q.C., of Winnipeg, the solicitor of the petitioners.

Respectfully submitted,

CHARLES HIBBERT TUPPER,

*Minister of Justice.*

GOVERNMENT HOUSE, WINNIPEG, 26th October, 1894.

The Honourable the Secretary of State, Ottawa.

SIR,—Referring to your communication, No. 3069, file 2621, of the 30th July, inst., transmitting to me the copy of a memorial addressed to His Excellency the Governor General in Council by His Eminence Cardinal Taschereau, the Archbishop of

## Manitoba School Case.

Quebec, and by the Roman Catholic Archbishops and Bishops in Canada on the subject of the laws relating to education in the province of Manitoba and in the North-west Territories, and also the copy of an Order of His Excellency the Governor General in Council, approved by His Excellency on the 26th of July, inst., in regard thereto, and requesting me to lay the memorial before my advisers and before the legislature of the province under my administration.

I beg to say that, having transmitted to my Government a copy of your despatch, together with the memorial and Order in Council to which it refers, I am now requested by my Government to enclose to you herewith, for transmission to His Excellency the Governor General in Council, a certified copy of Order in Council No. 4895 (enclosed herewith) approving the report of the Honourable my Attorney General, made after considering the subject of your communication No. 3069, file 2621, dated the 30th of July, inst., and the inclosures to which reference is therein made.

I have, &c.,

JOHN SCHULTZ, *Lieutenant Governor.*

To His Honour The Honourable John Christian Schultz, Lieutenant Governor of the Province of Manitoba.

*Report of a Committee of the Executive Council on matters referred to their consideration.*

Present:—The Honourable Mr. Grenway, in the chair; Mr. McMillan, Mr. Sifton, Mr. Watson, Mr. Cameron.

### ON MATTERS OF STATE.

MAY IT PLEASE YOUR HONOUR,

The Honourable the Attorney General submits to Council the following report:—

“That he has had under consideration the report of the Committee of the Honourable the Privy Council of Canada, approved by His Excellency on the 26th of July, 1894.

“The hope is expressed in the above mentioned document, that the Legislatures of Manitoba and the North-west Territories, respectively, will take into consideration at the earliest possible moment the matters which are complained of in the petition which is the subject of the report, and which are said to create dissatisfaction among Roman Catholics, not only in Manitoba and the North-west Territories, but likewise throughout Canada, and may take speedy measures to give redress in all matters in relation to which well founded complaint or grievance be ascertained. No intimation of a request preferred to the executive of the province of Manitoba is contained in the report, further than that it is ordered that a copy of the report be transmitted to the Lieutenant Governor of Manitoba, with a request that he will lay the same before his advisers and before the legislature of the province.

“The school law is enacted by the legislature and the duty of the executive is to carry out its provisions. Educational legislation, however, is of such importance as to be a matter of government policy, and it is therefore to be presumed that the above report has been forwarded to His Honour the Lieutenant Governor for transmission to his advisers in order that the Executive may declare its position upon the subject matter of the report.

“That portion of the report which deals with educational matters in Manitoba, takes as its basis certain statements of fact contained in a memorial addressed to His Excellency the Governor General in Council by His Eminence Cardinal Taschereau, the Archbishop of Quebec, and by the other Archbishops and Bishops of the Roman Catholic Church in Canada.

"The first statement of fact is as follows :—

"In 1890 laws were passed changing the school system, and replacing it by other enactments, which are, for a portion of the community, a source of grief, regret and hardship. The result of the new system is purely and simply the legal suppression of all Catholic schools, and the maintenance of all Protestant schools, with the rights and privileges they enjoyed previous to the school laws of 1890. The Catholic ratepayers have now to help to support the Protestant schools, which are exactly what they were, and to which, naturally, Catholic parents cannot conscientiously send their children.

"The second statement of fact is as follows :

"That for the last four years, the Catholics of Manitoba have been subjected to the unfair and unjust treatment resulting from the change in the school laws in 1890 ; that they have asked in vain for relief, and that instead of a remedy, they have been made the victims of a fresh injustice in the new Manitoba law, 57 Vic., chap. 28, assented to on March 2nd, 1894, one of the provisions of which forbids aid to be given by any municipality to any school not conducted according to the school system adopted in 1890.

"The effect of this enactment is stated by the memorialists to be that no municipality, even one exclusively Catholic, without a single Protestant in its limits, has any power to levy a single dollar for Catholic schools, while a Catholic municipality, where there are ten Protestant children, is obliged by law to levy on all the Catholics, as well as on the parents of the ten Protestant children, the money required for the education of the ten Protestant children.

"It is also stated that the Act of 1894 decrees the confiscation of all school property in all the districts which do not submit their schools to the new law, even although the school property may have been acquired by Catholics with their own money.

"The true facts may be briefly stated as follows :

"Previously to the year 1890, there had been two sets of schools, Protestant and Catholic, and provision was made by law for their maintenance and government. The maintenance was effected by a special school rate, levied upon each district for its own purposes, a general municipal rate, levied by the municipality and divided among the school districts in the municipality, and a grant from the government, which came out of the provincial treasury. In 1890 the above system was entirely changed, and a single set of schools was established. These schools are maintained by rates and grants as above set forth. They are non-sectarian public schools. The laws make no distinction between Catholics and Protestants, or between denominations of any kind.

"It is true that Catholic people complain that they are not treated as they should be, but the ground of complaint has not been properly stated. It is said that an unfair distinction is made against Roman Catholics. As a matter of fact, no distinction has been made against any one. The Roman Catholics demand that they shall be singled out from the rest of the community, and that special class legislation shall be afforded to them, as against all others. Our law is attacked because the legislature has refused to thus favour and distinguish them, as against other citizens. The ground of complaint, therefore, is not that an unfair distinction is made against Roman Catholics, but that the legislature declines to make an unfair distinction against others in favour of Roman Catholics.

"No citizen of the province has any justification in fact for claiming that he has not the same rights and the same privileges respecting education that any other citizen possesses.

"In addition to establishing the above principle in the public school legislation, of and subsequent to the year 1890, it has been made the duty of every ratepayer to contribute to the support of the public schools.

"The statement that the Catholic people are compelled to pay for the education of Protestant children is not ingenuous. Such a statement creates a false impression. The law is not responsible for any such effect. The correct statement of the fact is that all taxpayers contribute to the education of all children whose parents send them to the public schools. All taxable property is assessed for public school purposes, and all citizens have the same right to make use of public schools. The Catholic people have

## Manitoba School Case.

the same power to avail themselves of the advantages of the schools as the Protestant people. The religious exercises are non-sectarian, and are not used, except with the sanction and with the direction of the trustees, elected by all ratepayers without distinction of creed. If a Catholic refuses to take advantage of the public school, and decides voluntarily to maintain another school, he is exercising his own judgment in the same way as any person who prefers to send his children to a private school, to the support of which he contributes. Neither of such persons, however, by so doing, gains any immunity from the payment of school rates.

"As to the question of confiscation of school property, it is to be observed that the same question was the subject of argument before the Judicial Committee of the Privy Council in the case of *Barrett versus Winnipeg*, and that tribunal expressed the opinion that the Roman Catholics were somewhat better treated than the Protestant people in regard to the disposition of school property under the Act of 1890. In so far as the Act of 1894 is concerned, there is no ground for the statement attributed to the memorial, that it decrees the confiscation of school property in the districts which had not submitted their schools to the new law. The Act of 1894 has reference to the distribution of grants of money raised by taxation upon all taxable property. It deals with the public school system and in no way affects the ownership of any property of a school district which does not submit to the Public School Act, and which is therefore not a public school.

"The questions which are raised by the report now under consideration have been the subject of most voluminous discussion in the legislature of Manitoba during the past four years. All of the statements made in the memorial addressed to His Excellency the Governor General, and many others, have been repeatedly made to and considered by the legislature. That body has advisedly enacted educational legislation which gives to every citizen equal rights and equal privileges, and makes no distinction respecting nationality and religion. After a harassing legal contest the highest court in the British dominions has decided that the legislature, in enacting the law of 1890, was within its constitutional powers, and that the subject of education is one committed to the charge of the provincial legislature. Under these circumstances, the executive of the province see no reason for recommending the legislature to alter the principles of the legislation complained of. It has been made clear that there is no grievance, except it be a grievance that the legislature refuses to subsidize particular creeds out of the public funds, and the legislature can hardly be held to be responsible for the fact that their refusal to violate what seems to be a sound and just principle of government creates, in the words of the report, dissatisfaction amongst Roman Catholics, not only in Manitoba and the North-west Territories, but likewise throughout Canada.

"It is further to be observed that, inasmuch as the Public Schools Act of 1890 has been held to be within the jurisdiction of the provincial legislature, and the Act of 1894 is but the amendment of the Act of 1890, made for the purpose of more fully carrying out the plain intention and policy of the first Act, it is sufficiently clear that the Act of 1894 is within the jurisdiction of the legislature, and deals with a subject which the provincial authority has power to regulate. Disallowance of the Act of 1894, as suggested by the memorialists would be a most unjustifiable attempt to prevent the legislature from performing that duty which has been judicially declared to appertain to it, and it may be assumed that such disallowance would call forth an emphatic protest.

"The Government and Legislative Assembly would unitedly resist by every constitutional means any such attempt to interfere with their provincial autonomy."

On the recommendation of the Honourable the Attorney General, the Committee advise: That the foregoing report of the Honourable the Attorney General be approved.

Respectfully submitted,

THOMAS GREENWAY, *Chairman.*

EXECUTIVE COUNCIL CHAMBER,  
20th October, 1894.

## RETURN

(20c)

To an ADDRESS of the HOUSE OF COMMONS dated the 26th April, 1895, for:

1. A copy of the appeal of the Roman Catholic minority of Manitoba in reference to the abolition of their schools.
2. A copy of the case submitted to the Supreme Court of Canada, together with a copy of the decision of the Court.
3. A copy of the appeal from the decision of the Supreme Court to the Judicial Committee of Her Majesty's Privy Council, as well as a copy of the case and of the decision in reference thereto.
4. A copy of all petitions on behalf of the Roman Catholic minority of Manitoba, in support of their claim.
5. A copy of the appeal case before the Honourable the Privy Council of Canada.
6. A copy of all Orders in Council in reference to the same.
7. A copy of the remedial order.
8. A copy of all official correspondence in reference to the same.

By Order.

W. H. MONTAGUE,  
*Secretary of State.*

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PRIVY COUNCIL, OTTAWA, 22nd May, 1895.

The Under Secretary of State,  
Ottawa.

The address of the House of Commons, dated the 26th April, 1895, calling for copies of all papers relating to the Manitoba School Question, was complied with in reply to the address of the House of Commons, dated the 24th April, 1895.

JOHN J. MCGEE,  
*Clerk of the Privy Council.*

NOTE.—See Sessional Paper No. 20b.

## RETURN.

(20D)

To an ADDRESS of the HOUSE OF COMMONS, dated the 26th April, 1895, for : 1st. Copies of all petitions praying for the disallowance of the Manitoba Act, 57 Victoria, chap. 28 (1894), intituled " An Act to amend the Public School Act." 2nd. Copies of any Orders in Council in relation to such petitions.

By Order.

W. H. MONTAGUE,  
*Secretary of State.*

PRIVY COUNCIL, OTTAWA, 22nd May, 1895.

The Under Secretary of State,  
Ottawa.

The address of the House of Commons, dated the 26th April, 1895, calling for copies of all petitions praying for the disallowance of the Manitoba Act, 57 Vic., cap. 28, 1894, and for copies of all Orders in Council in relation to such petitions, was complied with in reply to the address of the House of Commons, dated the 24th April, 1895.

JOHN J. MCGEE,  
*Clerk of the Privy Council.*

NOTE.—See Sessional Paper No. 20b.

## MESSAGE.

(20E)

## ABERDEEN.

The Governor General transmits to the HOUSE OF COMMONS the Memorial of the Legislative Assembly of the province of Manitoba in answer to the Remedial Order of the 21st of March, 1895.

GOVERNMENT HOUSE,  
Ottawa, 11th July, 1895.

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GOVERNMENT HOUSE, WINNIPEG, 25th June, 1895.

The Honourable The Secretary of State,  
Ottawa.

SIR,—In further reference to your despatch No. 1254, file 1675, of date the 22nd March, 1895, transmitting a certified copy of a report of a committee of the Honourable the Privy Council, approved by His Excellency the Governor General on the 19th March, 1895, together with an order made in the premises by His Excellency the Governor General in Council, dated the 21st March, 1895, I have now the honour to inclose herewith the following communications and the memorial of the legislative assembly of the province of Manitoba, as follows :

1. Copy of communication from the honourable the provincial secretary.
2. Communication from the honourable the speaker of the legislative assembly of the province of Manitoba.
3. Memorial of the legislative assembly of the province of Manitoba.

I have the honour to be, sir,

Your obedient servant,

JOHN SCHULTZ, *Lieutenant Governor.*

DEPARTMENT OF THE PROVINCIAL SECRETARY,  
WINNIPEG, 24th June, 1895.

His Honour The Lieutenant Governor, Winnipeg.

SIR,—I am directed by the Honourable the Provincial Secretary to transmit to your honour for transmission to His Excellency the Governor General in Council the memorial adopted by the legislature of Manitoba on the 19th day of June last, in reply to the remedial order accompanying your honour's message dated the 25th day of March, 1895.

I have the honour to be, sir, your obedient servant,

DAVID PHILIP, *Chief Clerk.*



## Manitoba School Case.

To His Honour the Honourable Sir John Christian Schultz, K.C.M.G., Lieutenant Governor of Manitoba.

MAY IT PLEASE YOUR HONOUR,

We, Her Majesty's dutiful and loyal subjects, the legislative assembly of Manitoba, in legislature assembled, beg to present to your honour, for transmission to His Excellency the Governor General in Council, the memorial adopted by the legislature of Manitoba on the 19th day of June last, in reply to the remedial order accompanying your honour's message dated the 25th day of March, 1895.

FINLAY M. YOUNG, *Speaker.*

To His Excellency the Governor General of Canada in Council :

The memorial of the legislative assembly of the province of Manitoba humbly sheweth :—We have received through His Honour the Lieutenant Governor the order which Your Excellency in Council was pleased to make upon the twenty-first day of March, 1895, after hearing the appeal of the Roman Catholic minority of this province, which order is in the words following :—

ABERDEEN.

AT THE GOVERNMENT HOUSE AT OTTAWA,

THURSDAY, 21st day of March, 1895.

*Present :*

HIS EXCELLENCY THE GOVERNOR GENERAL,

The Honourable Sir Mackenzie Bowell,	The Honourable J. Ald. Ouimet,
" Sir Adolphe P. Caron,	" T. Mayne Daly,
" John Costigan,	" A. R. Angers,
" George E. Foster,	" W. B. Ives,
" Sir Charles Hibbert Tupper,	" A. R. Dickey,
" John Haggart,	" W. H. Montague,

in Council.

Whereas on the 26th day of November, 1892, a petition by way of appeal, under the provisions of section 22 of chapter 3, of the Acts of the Parliament of Canada, passed in the 33rd year of Her Majesty's reign and intituled "An Act to amend and continue the Act 32-33 Victoria, chapter 3, and to establish and provide for the government of the province of Manitoba (commonly called 'The Manitoba Act') and confirmed by 'The British North America Act of 1871,'" was presented to His Excellency the Governor General of Canada by and on behalf of the Roman Catholic minority of Her Majesty's subjects in the province of Manitoba, which petition, among other things, alleged in effect that by certain Acts of the legislature of the province of Manitoba passed after the union, and by an Act passed by the said legislature in the forty-fourth year of Her Majesty's reign, chapter 4, which may be cited as "The Manitoba School Act" and by the Acts amending the same, the Roman Catholic minority of Her Majesty's subjects in Manitoba acquired the rights and privileges in relation to education thereby conferred upon them, including the right to build, maintain, equip, manage, conduct and support Roman Catholic schools in the manner provided by the said statutes, the right to a proportionate share of any grant made out of the public funds for the purposes of education, and the right of exemption of such members of the Roman Catholic Church as contribute to such Roman Catholic schools from all payments or contributions to the support of any other schools.

That subsequently in the 53rd year of Her Majesty's reign, two statutes were passed by the legislature of the province of Manitoba relating to education, which statutes came into force on the 1st day of May, 1890, and are intituled respectively :

"An Act respecting the Department of Education," and "An Act respecting Public Schools," and that the effect of the two last mentioned Statutes was to repeal the previous Acts of the province of Manitoba in relation to education, and to deprive the Roman Catholic minority of the rights and privileges which it had acquired under such previous Statutes; and by the said petition the said Roman Catholic minority prayed among other things, that it might be declared that the said last mentioned Acts did affect the rights and privileges of the said Roman Catholic minority of the Queen's subjects in relation to education.

That it might be declared that to His Excellency the Governor General in Council it seems requisite that the provisions of the Statutes in force in the province of Manitoba, prior to the passage of the said Acts, should be re-enacted in so far at least as may be necessary to secure to the Roman Catholics in the said province the right to build, maintain, equip, manage, conduct and support their schools in the manner provided for by said statutes, to secure to them their proportionate share of any grant, made out of the public funds for the purposes of education, and to relieve such members of the Roman Catholic church as contribute to such Roman Catholic schools from all payment or contribution to the support of any other schools, or that the said Acts of 1890 should be so modified or amended as to effect such purposes.

And that such further or other declaration or order might be made as to His Excellency the Governor General in Council should under the circumstances seem proper, and that such directions might be given, provision made, and all things done in the premises for the purpose of affording relief to the said Roman Catholic minority in the said province, as to His Excellency in Council might seem meet.

And whereas the 26th day of February, 1895, having been appointed for the hearing of the said appeal, and the same coming on to be heard on that day, and on the 5th, 6th and 7th days of March, 1895, in the presence of council for the petitioners (the said Roman Catholic minority of Her Majesty's subjects in the province of Manitoba), and as well for the province of Manitoba, upon reading the said petition and the statutes therein referred to and upon hearing what was alleged by counsel of both sides, His Excellency the Governor General in Council was pleased to order and adjudge, and it is hereby ordered and adjudged, that the said appeal be and the same is hereby allowed in so far as it relates to rights acquired by the said Roman Catholic minority under legislation of the province of Manitoba, passed subsequent to the union of that province with the Dominion of Canada, and His Excellency the Governor General in Council was pleased to adjudge and declare, and it is hereby adjudged and declared, that by the two Acts passed by the legislature of the province of Manitoba, on the 1st day of May, 1890, intituled respectively: "An Act respecting the department of education," and "An Act respecting Public Schools," the rights and privileges of the Roman Catholic minority of the said province in relation to education prior to the 1st day of May, 1890, have been affected by depriving the Roman Catholic minority of the following rights and privileges which previous to, and until the 1st day of May, 1890, such minority had, viz.:—

(a.) The right to build, maintain, equip, manage, conduct and support Roman Catholic schools in the manner provided for by the said Statutes, which were repealed by the two Acts of 1890, aforesaid.

(b.) The right to share proportionately in any grant made out of the public funds for the purposes of education.

(c.) The right of exemption of such Roman Catholics as contribute to Roman Catholic schools from all payment or contribution to the support of any other schools.

And His Excellency the Governor General in Council was further pleased to declare and decide, and it is hereby declared that it seems requisite that the system of education embodied in the two Acts of 1890, aforesaid, shall be supplemented by a provincial act or acts which will restore to the Roman Catholic minority the said rights and privileges of which such minority has been so deprived as aforesaid, and which will modify the said Acts of 1890 so far, and so far only as may be necessary to give effect to the provisions restoring the rights and privileges in paragraphs (a), (b) and (c), hereinbefore mentioned.

## Manitoba School Case.

Whereof the Lieutenant Governor of the province of Manitoba for the time being, and the legislature of the said province, and all persons whom it may concern, are to take notice and govern themselves accordingly.

JOHN J. MCGEE,

*Clerk of the Queen's Privy Council of Canada.*

The privileges which by the said order we are commanded to restore to our Roman Catholic fellow-citizens are substantially the same privileges which they enjoyed previously to the year 1890. Compliance with the terms of the order would restore Catholic Separate Schools with no more satisfactory guarantees for their efficiency than existed prior to the said date.

The educational policy embodied in our present statutes was adopted after an examination of the results of the policy theretofore followed under which the Separate Roman Catholic schools (now sought to be restored) had existed for a period of upwards of 19 years. The said schools were found to be inefficient. As conducted under the Roman Catholic Section of the Board of Education they did not possess the attributes of efficient modern public schools. Their conduct, management and regulation were defective; as a result of leaving a large section of the population with no better means of education than was thus supplied, many people grew up in a state of illiteracy. So far as we are aware there has never been an attempt made to defend these schools on their merits, and we do not know of any ground upon which the expenditure of public money in their support could be justified.

We are therefore compelled to respectfully state to Your Excellency in Council that we cannot accept the responsibility of carrying into effect the terms of the Remedial Order.

Objections upon principle may be taken to any modification of our educational Statutes which would result in the establishment of more sets of separate schools. Apart, however, from the objections upon principle there are serious objections from a practical educational standpoint. Some of these objections may be briefly indicated:

We labour under great difficulties in maintaining an efficient system of primary education. The school taxes bear heavily upon our people. The large amount of land which is free from school taxes and the great extent of country over which our small population is scattered present obstacles to efficiency and progress.

The reforms effected in 1890 have given a strong impetus to educational work, but the difficulties which are inherent in our circumstances have constantly to be met. It will be obvious that the establishment of a set of Roman Catholic schools, followed by a set of Anglican schools and possibly Mennonite, Icelandic and other schools, would so impair our present system that any approach to even our present general standard of efficiency would be quite impossible. We contemplate the inauguration of such a state of affairs with very grave apprehension. We have no hesitation in saying that there cannot be suggested any measure which, to our minds, would more seriously imperil the development of our province.

We believe that when the remedial order was made, there was not available then to Your Excellency in Council full and accurate information as to the working of our former system of schools.

We also believe that there was lacking the means of forming a correct judgment as to the effect upon the province of changes in the direction indicated in the order.

Being impressed with this view, we respectfully submit that it is not yet too late to make a full and deliberate investigation of the whole subject. Should such a course be adopted, we shall cheerfully assist in affording the most complete information available. An investigation of such a kind would furnish a substantial basis of fact upon which conclusions could be formed with a reasonable degree of certainty.

It is urged most strongly that upon so important a matter, involving, as it does, the religious feelings and convictions of different classes of the people of Canada and the educational interests of a province which is expected to become one of the most important in the Dominion, no hasty action should be taken, but that, on the contrary, the greatest care and deliberation should be exercised and a full and thorough investigation made.

While we do not think it proper to enter upon a legal argument in this memorial, we deem it our duty to briefly call attention to some of the legal and constitutional difficulties which surround the case. It is held by some authorities that any action taken by the parliament of Canada upon the subject will be irrevocable. While this opinion may or may not be held to be sound, it is in our judgment only necessary to point out that there are substantial grounds for entertaining such an opinion, in order to emphasize the necessity for acquiring a most ample knowledge of the facts before any suggestion of parliamentary action is made.

It will be admitted that the two essentials of any effective and substantial restoration of Roman Catholic privileges are:

1. The right to levy school taxes;
2. The right to participate in the legislative school grant; without these privileges the separate schools cannot be properly carried on, and without them therefore, any professed restoration of privileges would be illusory.

It may be held that the power to collect taxes for school purposes conferred upon school boards by our former educational statutes was conferred by virtue of the provisions of subsection (2) of section 92 of the British North America Act and not by virtue of the provisions of section 22 of the Manitoba Act. If this view be well founded, then that portion of the Act of 1890 which abolished the said right to collect taxes is not subject to appeal to Your Excellency in Council, and the remedial order and any subsequent legislative act of the Parliament of Canada (in so far as they may purport to restore the said right) will be *ultra vires*.

As to the legislative grant we hold that it is entirely within the control of the legislature of the province that no part of the public funds of the province could be made available for the support of separate schools without the voluntary action of the legislature. It would appear therefore that any action of the Parliament of Canada looking to the restoration of Roman Catholic privileges must, to be of real and substantial benefit, be supplemented by the voluntary action of the provincial legislature.

If this be the case, nothing could be more unfortunate from the standpoint of the Roman Catholic people themselves, than any hasty or peremptory action on the part of the Parliament of Canada, because such action would probably produce strained relations and tend to prevent the possibility of restoring harmony.

We respectfully suggest to Your Excellency in Council that all of the above considerations call most strongly for full and careful deliberation, and for such a course of action as will avoid irritating complications.

We deem it proper also to call attention to the fact that it is only a few months since the latest decision upon the subject was given by the Judicial Committee of the Privy Council. Previously to that time a majority of the members of the Legislative Assembly of Manitoba had either expressly or impliedly given pledges to their constituents which they feel in honour bound loyally to fulfil.

We understand that it has been lately suggested that private funds of the Roman Catholic Church and people had been invested in school buildings and land that are now appropriated for public school purposes. No evidence of such fact has ever been laid before us, so far as we can ascertain, but we profess ourselves willing if any such injustice can be established, to make full and fair compensation therefor.

In conclusion we beg respectfully to place on record our continued loyalty to Her Gracious Majesty and to the laws which the Parliament of Great Britain has in its wisdom seen fit to enact for the good government of Canada.

FINLAY M. YOUNG,  
*Speaker.*

## RETURN

(20F)

To an ADDRESS of the SENATE, dated the 2nd July, 1895, for a copy of the Order in Council transmitting to His Honour the Lieutenant Governor of Manitoba, for the information of his Government and the Legislature of Manitoba, the Petition and representations of their Lordships the Canadian Archbishops and Bishops, presented to the Senate during last Session *re* Manitoba School legislation; the answer of the Government of Manitoba to said Order in Council; also all correspondence respecting the same between the Dominion Government and the Manitoba Government.

By Order.

W. H. MONTAGUE,  
*Secretary of State.*

DEPARTMENT OF THE SECRETARY OF STATE, OTTAWA, 30th July, 1894.

His Honour the Lieutenant Governor of Manitoba, Winnipeg, Man.

SIR,—I have the honour to inform you that His Excellency the Governor General has had under his consideration in council a memorial addressed to His Excellency in Council by His Eminence Cardinal Taschereau, Archbishop of Quebec, and by the Roman Catholic Archbishops and Bishops in Canada on the subject of the laws relating to education in the province of Manitoba and in the North-west Territories, and I am now to transmit to your honour copy of such memorial and also of an order of His Excellency in Council, approved by His Excellency on the 26th July instant, in regard thereto, with a request that you will lay the same before your advisers and before the legislature of the province under your administration.

I have, &c.,

P. PELLETIER,  
*Acting Under Secretary of State.*

EXTRACT from a Report of the Committee of the Honourable the Privy Council, approved by His Excellency on the 26th July, 1894.

NOTE.—See ante, page 340.

# Manitoba School Case.

GOVERNMENT HOUSE, WINNIPEG, 3rd August, 1894.

The Under Secretary of State,  
Ottawa.

SIR,—I have the honour to acknowledge the receipt of your letter, No. 3069, File 2621, of date 30th ultimo, with the inclosures (2) as therein stated, and to say that I have this day caused a copy of your letter together with copies of the extract from a report of a Committee of the Honourable the Privy Council, approved by His Excellency on the 26th July, 1894, and the Memorial of His Eminence Cardinal Tascher, Archbishop of Quebec and the Roman Catholic Archbishops and Bishops in Canada, on the subject of the laws relating to education in the province of Manitoba and in the North-west Territories, to be transmitted to my Government for their information and for the purposes indicated in your letter.

I have, &c.,

JOHN SCHULTZ, *Lieutenant Governor.*

GOVERNMENT HOUSE, WINNIPEG, 26th Oct., 1894.

The Honourable the Secretary of State,  
Ottawa.

NOTE.—*For correspondence and also Report of the Executive Council of Manitoba see ante, commencing near bottom of page 344.*

DEPARTMENT OF THE SECRETARY OF STATE,  
OTTAWA, 3rd November, 1894.

His Honour the Lieutenant Governor of Manitoba, Winnipeg, Man.

SIR,—I have the honour to acknowledge the receipt of your despatch of the 27th ultimo, inclosing for submission to His Excellency the Governor General in Council a certified copy of an Order in Council approving the report of the Honourable the Attorney General of Manitoba, in connection with the Order in Council passed by this Government in reference to a memorial from His Eminence Cardinal Taschereau, the Archbishop of Quebec, and the Roman Catholic Archbishops and Bishops in Canada on the subject of the laws relating to education in the province of Manitoba and in the North-west Territories.

I have, etc.,

L. A. CATELLIER,

*Under Secretary of State.*

